JOHN J. BRENNAN, having been previously sworn, resumed the stand, and called as a witness on behalf of the defendant, testified as follows:

Mr. Rosenblum: I will call another witness and Mr. Perry will examine him.

Mr. Perry: I take it Mr. Brennan need not be sworn again.

Mr. Hallinan: No.

Direct examination by Mr. Perry:

Q. Mr. Brennan, when you were here with us early this week I think you told us you are the—what? A. Cashier.

Q. What position did you have at the bank? (858) A. Cashier, presently I am cashier.

Q. In the period from December 1949 to about February 1950 what position did you have at that time? A. Well, actually from—I would say from December 1949 to January '50 I was the chief clerk, and the manager who had been my immediate superior was taken sick in November of '49, didn't return to the bank, so around January 1950 I was made office manager.

Q. What were your duties as chief clerk? A. To assist the office manager in the general operations of the bank branch.

Q. What did your duties become when you became manager? A. Well, I was then in charge of operations at the bank branch.

Q. Are you acquainted with the procedural setup in the operation at the branch? A. Yes, sir.

Q. Will you tell us something, please, about the tellers and how they functioned, particularly with reference, say, to getting money in the morning and going out to their cage, at the close of day what do they do with the money and things of that nature? (859) Will you tell us, please?

Mr. Hallinan: I don't know that this is relevant.
The Court: We will find out. Go ahead.
Mr. Hallinan: All right.

A. In the mornings the tellers are let into the vault by the manager and the chief clerk of the branch.

Q. Is that the back—would you look at the chart behind you, please, Mr. Brennan? You refer now to the vault, the box marked vault, is that right? A. That is right.

Q. Will you tell us what is in the vault, please? This box appears here, is that right? A. That is right.

Q. Tell us what is in the vault. A. There are safe deposit boxes in the vault. There is a chest that contains the coin that the tellers handle during any day——

Q. Just a minute. As you are looking into the vault, as I would be looking into the vault, on the lefthand side, what do you have? A. There is a bank of a couple of rows of safe deposit boxes and next to that bank of safe deposit (860) boxes is at the top the coin chest which opens up under key lock.

Q. Tell us something about that, please. How many coin chests are there? A. There is one coin chest that has two doors, two swinging doors that swing open when unlocked.

Q. Is there anything in there that each teller has access to only? A. No, sir. One teller has access to the coin that is in that chest, because one teller is designated as coin teller. It is under his care.

Q. Do the tellers, the other tellers have chests in there, other chests, where they keep their money at the close of the day? A. Below the coin chest is four separate chests that operate on two combinations on each door. The teller has a combination of the bottom combination and the office management has the top combination.

Q. At the end of the business day what would a teller do, for example, with the money that that teller has at

the close of the day? A. After he has proven his money he packs his money away in a small chest, takes whatever surplus coin he may (860a) have left over and takes that on a cart, wagon cart, to the vault under the supervision of one of the management people, and puts it away in his separate—in his own individual chest, locks it. And he is then through for the evening.

(861) Q. Who has access to those chests? I am talking about the tellers' chests now. A. The teller, only with somebody from management.

Q. Did you finish your answer? A. I say, the teller, with someone from management. There must be two people that go into the tellers' chest.

Q. How many keys are there to each of these chests? A. These chests do not work on key. They work on a combination arrangement. There are two combinations; the teller has one and management has the other. It is dual control at that point.

Q. Are you acquainted with the duties that the persons have who take care of the bond cash at the bank? A. Yes.

Q. Were you acquainted with the duties during the time in issue here? A. Yes, sir.

Q. Would you tell us, please, what would the customary procedure be for the teller cashing bonds; what would the teller do in particular with the bonds that have been redeemed and with the redemption forms? (862) A. The teller who was assigned to that task would collect them day by day from the other tellers, also account for any that he might have cashed himself. And periodically, about twice a month, send those cashed bonds for collection to the Federal Reserve Bank. At the end of each evening any bonds that had been cashed during that day would be charged to the Federal Reserve Bank against the money given out.

Q. Physically, what would be done with the bonds that

have now been redeemed, the bonds themselves? A. Those bonds redeemed would be under the control of the bond teller and they would be stored away in the teller's chest with his money over night, from night to night.

Q. What we are talking about now is the chest that is in the vault, is that correct? A. That is correct.

Q. Tell us if you will, please, what procedure is followed with relation to the redemption forms. A. The redemption forms were also held by the bond teller, and about also twice a month as these bonds were sent down to Federal Reserve, the offsetting redemption tickets would be turned over to the chief clerk and they would be inserted into a monthly work (863) folder which was, in a sense, a file of miscellaneous work handled during that month. They would be left stored in those work folders, and at the end of the month the work folder it would be put away in a semi-permanent storage.

Q. Perhaps I didn't follow you. What would the teller do at the end of each day? Would she give them to somebody or would he or she hold on to them? A. No. That bond teller would hold those redemption tickets for approximately two weeks.

Q. Excuse me. Where would they be put while the teller is holding them for this two week period? A. Well, it is a little hard to say. They was no specific, to my knowledge, regulation covering where they could be stored. I would say the teller could lock them in their cash drawer or they could lock them away with the bonds in the chest each evening.

Q. You differentiate between chest and cash drawer, is that correct? A. Yes. The chest being the one in the vault and the cash drawer being the teller's own cash drawer at his station, at the teller's stations.

Q. In other words, each teller at the place (864) where

they worked in the bank would have their own cash drawer, is that correct? A. That is true.

Q. Will you tell us, please, something about the cash drawer? A. Well, the first or top cash drawer was to the left-hand of the teller as he faced the public. It was broken into small compartments so that different denomination bills could be put in different compartments so that they wouldn't be confused. And behind those compartments was a large space of, roughly, fifteen feet depth from the back of the drawer and about—I am sorry; fifteen inches deep and about eighteen inches across which would probably be the width of the drawer.

This drawer has a lock on it which the teller has the key for. Below that drawer is a certain drawer which is not compartmented. And the tellers will occasionally use it during the day for surplus packages of cash that they might have on hand if it was more than could be held in the first drawer.

Q. You spoke of the tellers having the key to cash box, is that right?

(865) Q. Does anyone else have a key but the teller? A. No, sir. The teller is the only one that would be permitted to carry a key. There were two keys; the teller had one and one key was kept in a key control. One extra key. In the event that the other key were lost the extra key could be put into use.

Q. You say one key the teller had, is that correct? A. That is correct.

Q. Was that turned into the bank at the end of each day by the teller? A. No, sir.

Q. Tell us what the practice was with respect to that key? A. The tellers were permitted the carry the key on their person. There was never any money locked in the drawer at the end of an evening and it was management's responsibility to check the drawers to see that they were

empty and that all the cash was transported to the vault. So that there was no reason to lock the drawer over night.

(866) Q. What about the other key you spoke of, the control key? A. We have a key control metal box on a wall in the office, and extra keys are maintained in that box on a numbering arrangement. Each key is given a certain number.

Q. Who has access to those keys? A. The manager and chief clerk. Either one might have the key to that key chest.

Q. Is it their responsibility to maintain control over that? A. That's right.

Q. Were the desks in the bank, desks of the officers, also locked and did they have keys for those? A. Yes, each officer had a key to his own desk, and it was the practice and recommended that the desks be locked at night by each of them.

Q. Was there any other key to those desks than the keys the officers had? A. Yes, the same arrangement I described for the tellers' extra key was maintained for desk keys. They were kept in a locked key control case, that same case I spoke of before.

Q. And that would be under the control, you say, (867) of the chief clerk or manager? A. Yes, sir.

Q. You say it was under the control of either of those persons. Would you tell us, please, just exactly; and specify what you mean by that? A. By "control" I mean that not any employee or officer, I guess, for that matter either, could go and open that key control chest. They would have to come to the chief clerk or manager and have him go with them to get a key out of that chest, and he had a key to open it. In other words, it was locked all the time.

Q. It was kept locked? A. That's right, yes.

Q. Will you tell us, please, what was the practice in

the bank during the period from 1947, let us say, to 1950, '51, with relationship to use—I withdraw that—with relationship to access to the safe deposit boxes by customers?

Mr. Hallinan: I will object to this, your Honor. May we approach the bench?

The Court: Come on.

(The following proceedings took place at the bench, not in the hearing of the jury):

Mr. Hallinan: I think this is the very area which we have discussed, and your Honor has already ruled (868) on it. In so far as they are seeking to show that what the tellers had to do with their cash boxes, as they call them, in this room, I see no objection to that, but this question is, I think, in that area where they are going to try to knock down Mishel after having set him up on that safe deposit box.

He was asking what was the access of customers to safe deposit boxes.

The Court: You went into a discussion of what happened in the vault room yourself.

Mr. Hallinan: No, not once.

The Court: That is where they filled out the bond redemption forms.

Mr. Hallinan: No, it was one of those little rooms outside.

The Court: I mean one of the little places outside.

Mr. Hallinan: No, I brought out nothing about the vault room—

Mr. Perry: It seems to me we should be able to show——

The Court: Go ahead and we will see what happens.

John J. Brennan—for Defendant—Direct

(Proceedings were resumed within the hearing of the jury as follows):

(869) Mr. Berry: May I have that last question reread, please?

(Question read.)

Q. Or depositors, perhaps I should say. A. I just like to say at this point that I was first employed at the 48th Street office of the bank in June of 1948.

Will you preface your question——

Mr. Hallinan: Go ahead, finish your answer.

A. From June, 1948, until '51 I could tell you what it was at that time.

Q. Start out, then, with the period you are aware of, June of '48. A. For a customer to get access to his safe deposit box, the customer was issued a key to the box and our guard, our floor man, he functioned in both capacities, has a master key to the other lock in any safe deposit box. There are two locks. That again is what you might call dual control. The customer has one key, the guard has the other. One key alone will not open the box. It requires two keys at one time to open the box. The customer makes it known to the guard that he wishes to go into his—get his safe deposit box and examine the contents. The guard will open the (870) grill door or gate to the vault and then insert his key in the master lock and the customer inserts his key in the other lock, they turn them open and take out the safe deposit box. The customer is free to examine the contents of the box in two small cubicle rooms out in front of the vault. When he is finished, he calls the guard, the guard goes back into the vault with him, reinserts the safe deposit box in the compartment, locks the door, hands the customer

back his key, takes his master key out, closes the gate and the transaction is over.

Mr. Hallinan: I now renew my objection and move to strike this on the ground it is irrelevant under your Honor's ruling.

The Court: I will let it stand. Go ahead.

Mr. Perry: I did not get the ruling.

The Court: I said I will let it stand. Go ahead.

Mr. Perry: Thank you.

Q. You spoke of two keys, one key being in the possession of the customer. A. Yes, sir.

Q. And the other key being in the possession of the guard.

(871) Were there duplicate keys to the guard's key?

The Court: I do not know how far we want to go into this matter.

Mr. Perry. There are just one or two questions.

Mr. Hallinan: I will object to one or two questions. I object.

The Court: I think that I will sustain the objection to any greater particularity on this. I do not see where it gets us.

Q. Mr. Brennan, I want to direct your attention right now to these redemption forms. I think you called them redemption tickets.

You were telling us that periodically the redeemed bonds would be sent to the Federal Reserve Bank. A. That's right.

Q. And you said periodically also something would be done with these redemption tickets. A. (Witness nods.)

Q. Will you tell us, please, from that point on what

would be done with these redemption tickets at the tim say, when the bonds, the redeemed bonds, are sent t the Treasury? A. Yes, the bond teller would give the to the chief clerk of the office. He would take them an put (872) them into a monthly work folder.

Q. Excuse me. You said "he." I do not know whon you mean by "he" the teller or the chief clerk. A. Th chief clerk.

Q. I see. A. They would remain stored in the work folder until the end of the month, the last day of the month or the first day of the new month, at which time the work folder containing these bond tickets and other miscellaneous papers, etcetera, that folder would be put in a cabinet, a locked cabinet, in the storeroom of the bank and left in semi-permanent storage.

Q. Where was the storeroom located? A. On the balcony level of the bank, a room behind the balcony. The door to the room opened to the balcony of the bank.

Q. How was access gained to this storeroom?

The Court: I am interested in getting a certain amount of background, Mr. Perry, but I really wonder what you are doing.

Mr. Perry: May I come to the bench and explain?

The Court: Yes.

(Discussion off the record at the bench.)

Q. Mr. Brennan, are you acquainted with the (873) instructions that were given to tellers say in the period 1949 and 1950 with relation to the cashing of bonds?

Mr. Hallinan: I will object to the form of this question unless it is limited to the situation we are confronted with in this case, your Honor.

The Court: I will take it. Go ahead.

A. Yes.

Q. Will you tell, please, what those instructions were? A. Well, I will put it this way, that I have tried to recollect about what instructions were or what form they were in during that period of time. I was relatively new in the business at that time, and I was instructed frequently orally on how to conduct transactions of most any sort that would come up in an operating day, and I believe that whatever instructions I might have been acquainted with for the cashing of bonds and would have expected the tellers to be acquainted with might have come to me orally. I don't remember actually specifically receiving any written instructions covering the cashing of bonds although I know that there was—there were probably several operating circulars in effect from the Federal Reserve Bank as agent for (874) the Treasury Department covering the cashing of bonds, in various instances how they should be handled, how they should be inscribed, signed, etcetera.

The tellers were permitted to cash bonds for customers and were expected to get identification or know the customer.

Q. Keep your voice up, please. A. I say they were expected to get identification or know the customer for whom they were cashing bonds.

Q. Tell us, was there any procedure set up by the bank with relation to the cashing of bonds, let us say, by total strangers? A. Well, there again I would say this, that if a total stranger came into the bank and wanted to cash a Series E bond, that he would have been referred to somebody like myself on the platform, and we would ask him for identification, and if we could be satisfied with the identification we would then have him fill out this redemption form or ticket that we spoke of before and possibly make some notation as to what the identification consisted of and then——

Q. Where would you make that notation, Mr. Brenna
A. Normally, on the bottom last line of that form.

Q. Of the redemption ticket? (875) A. Yes, that's rig

Q. Might there be any other notations made on the
demption ticket? As a practice, I mean. A. Of wh
sort?

Q. I am not telling you; I am asking you.

Would anything else be done with the redempt n tick
except perhaps noting the basis of identification? A. N

Q. Tell us, if you can, please, whether or not there wa
any established procedure of making any notations on th
bonds themselves. By the officers. I am not referring to th
tellers. A. Well, there again I don't know of any specifi
established procedure. I can tell you what I might hav
done in these instances. I might have made some notation o
the identification that I obtained from the person wh
wanted to cash the bond and note that there on the las
line and initial the bond and give it to the customer an
direct him or direct the floor man to take the customer t
the teller, any teller, and have it cashed.

Q. You said initial the bond. A. I meant initial the
redemption form.

Q. As a practice, would the bond itself be noted (876)
or marked in any way by an officer if an officer were mak-
ing that identification? A. No.

Q. Would you tell us, please, what was the practice in
the bank, if there were any, with relation to cashing bonds
for strangers where the stranger is introduced by a known
depositor of the bank? A. There would be no specific
instructions, I would say. If a customer were to introduce
a person who was the payee on a bond and said that he
wanted to identify him so that he could cash his bond,
that usually is enough identification to my way of think
ing and I believe to anybody who worked in the bank at

the time. Firstly, we don't wish to embarrass our customer by asking for additional specific identification from the stranger or the person that he introduces, and I might make a notation on the redemption form that our customer, say it might be John Smith, introduced John Brown, who cashed the bonds.

Q. But the question I asked you is, was there any practice with relation to who should make the identification with regard to instances such as I put to you of strangers being identified by known depositors in connection with the cashing of bonds? (877) A. No, I don't think—no, no specific practice covering that or recommendations or procedure covering that type of a transaction.

Q. Was that an area, for example, where a teller might himself or herself accept the identification by a known depositor and cash the bonds? A. It could be, yes.

Q. And it could also be, I presume, a situation where a bank officer might make the identification? A. Yes.

Q. Mr. Brennan, when you last testified you told us, did you not, that Mr. Mishel was known to you in the bank? A. Yes, he was. I guess you asked me that question before.

Q. He was a depositor, was he not? A. Yes, he was known as a depositor in the bank, that's right.

Q. And the period when you started in the bank in 1948 through, let us say June or July of 1950—I will withdraw that.

From the period when you started with the bank in 1948 up through and including say, March of 1950, had you seen Mishel in the bank?

(878) Will you tell us, please, if you can, whether or not you saw him often or infrequently or what the fact may be? A. I would say that I probably saw him two or three times a week. It has to be a guess. I don't know exactly.

Q. Mr. Brennan, would you turn, please, behind you and look at that floor plan of the bank.

Now, would you tell us where Mr. Miller's desk was please? There is a mark on here "Miller." Is that where Mr. Miller's desk was? A. I am inclined to think it was maybe here (indicating) rather than there (indicating).

Mr. Perry: May we mark that, your Honor?
The Court: Yes.

Q. Would you mark, Mr. Brennan, where Mr. Miller's desk was located?

The Court: Put a "B".

Q. Make a box and put the letter "B" where you think it was located. A. (Witness writes.)

Q. Mr. Brennan, will you also point out to us now where——

Mr. Perry: Well, I withdraw that.

(879) Q. Did you have a desk at the bank? A. Yes, sir.

Q. Will you point out to us where your desk was located? A. About here (indicating). "B"?

Q. Spell it out so it will be clear. Put "Brennan." Spell it out. A. (Witness writes.)

Q. I want to direct your attention back to the period that I have just mentioned, 1948 to March of 1950.

Will you tell us, please, whether or not there were any desks in between your desk and Mr. Miller's desk? A. Yes, I believe, to the best of my recollection, there was a secretary's desk immediately in front of my desk.

Q. Would you please note that for us so we can follow

your testimony? A. Just about there (writing). "Secretary"?

Q. Would you please put that down. A. (Witness writes.)

Q. Whose secretary was she? A. Mr. Miller's secretary.

Q. Will you tell us, please, about how far from (880) Mr. Miller's desk your desk is, if you can guess? Keep in mind this is the scale. That distance is approximately thirty feet. A. The distance I mark off here?

Q. No. That is the scale up there. That is approximately thirty feet. A. I would guess about fifteen to eighteen feet, probably.

Q. That your desk was located away from Mr. Miller's desk? A. Yes. In other words, fifteen to eighteen feet from here to here (indicating).

Q. When you are indicating, you are indicating fifteen to eighteen feet—you are pointing at Miller's desk and you are pointing at your own desk; is that correct? A. Yes.

Q. On the occasion, Mr. Brennan, that you saw Mr. Mishel in the bank, do you recall ever seeing him with any other persons? A. Oh, yes.

Q. Do you know the names of any of these other persons that you saw him with? (881) A. Sure. I have spoken to him myself on occasions.

Q. Who is that, please? A. Sir?

Q. Would you give us his name? A. I say I have spoken to Mishel on occasion when he was a depositor in the bank in that period of time. I would be one.

Q. My question is not clear. I am talking about people who may have been in——

Mr. Perry: Well, I withdraw that.

Q. Do you know whether or not during this time Mr. Mishel had other people in his employ? A. I remember only one party that I had the impression was in Mr. Mishel's employ. I had no knowledge positively that he was in his employ, but he was often in his company when he would come in the bank.

Q. Do you know that person's name? A. I believe it's Schnabel. He is a heavy set, dark haired person and he had a harelip, and for that reason it is easy for me to remember him.

Q. If I suggested his first name might be Norton, would that refresh you as to whether or not— A. Yes. Mortie, or Nortie, something like that.

(882) Q. Can you recall anyone else that was in the bank with Mr. Mishel who was one of Mr. Mishel's employees? A. No.

Q. If I asked you whether or not the name Samuel Siegel means anything to you in that line, would you please tell us? A. No, sir, it doesn't.

Q. Does that refresh your recollection as to whether you ever saw a man by the name of Sam Siegel? A. I just don't know a Sam Siegel.

Q. How often would you say you saw Mr. Schnabel in the bank, if you can tell us, please? A. Well, I would say a period of maybe three, four months when he might— there was a period of three or four months when he seemed to be in Mr. Mishel's company. That would not be to say that from the first time I ever saw Mishel. It was after I had known Mishel as a customer in the bank. Probably for about three or four months in 1949, I would guess.

Q. Is the name Irving Rosenberg at all familiar to you in any way either by name or as one of Mr. Mishel's employees? A. No.

Q. Mr. Brennan, I show you Government's Exhibit 9

(883) in evidence and ask you whether or not that face is familiar to you (handing to witness)? A. No.

Q. Do you have any recollection of ever having seen that individual before? A. No.

Q. Were you shown this picture by Mr. Hallinan? A. I was shown a picture by Mr. Hallinan. I am not sure now that that was the same picture.

I am not sure.

The Court: We will take a recess now until 10.30 tomorrow morning. Don't discuss the case.

(Adjourned to October 26, 1956, at 10.30 o'clock a. m.)

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(884)

New York, October 26, 1956;
10.30 o'clock a.m.

Trial resumed.

JOHN J. BRENNAN resumed.

Direct examination continued by Mr. Perry:

Q. Mr. Brennan, yesterday you were telling us about the platform in the bank. Would you perhaps clarify that for us? What do you mean when you say platform? A. Well, I guess I can show you best on this diagram the platform area of the bank.

Q. Would you show us, please? A. The platform that starts at the front of the bank here (indicating) and runs to this wall back here (indicating) and is divided off by a railing of three or four feet in height that runs from the back to the front of the bank, and then it is bounded on this side (indicating) by this wall here (indicating).

Q. Mr. Brennan, it isn't actually on the platform, is it? It is level with the— A. It is level with the floor.

Q. —the floor of the bank? (885) A. That is right.

Q. On this platform that you pointed out which would be on the left as you are looking at the bank from the front door, that is where the desk space is, isn't it? A. That is correct.

Q. Where the various officers and other personnel sit? A. Right.

Q. In order that we can keep that clearly in mind, Mr. Brennan, you have shown us where Mr. Miller's desk was, you have shown us where your desk was, I am going to ask you, without bothering to point it out were there desks behind Mr. Miller's desk? A. Yes.

Q. How many? A. Two.

Q. Mr. Vassil's and his secretary, is that correct? A. Yes, that is right.

Q. Now you pointed out where your desk was or is, I should say? A. Yes.

Q. Now were there desks after yours, and by that (886) I mean stretching up to the front of the bank? A. Yes.

Q. How many desks, approximately? A. Four, three or four.

Q. And at this platform space you had the officers of the bank seated as well as secretarial help, is that right? A. Yes, sir.

Q. Thank you. Mr. Brennan, would you tell us, please, what procedure was followed in the bank, say, from 1948, when you started, to March 1950 in opening accounts? A. Well— .

Q. And tell us what papers were used so that we can follow your testimony, please. A. First we used an opening sheet, which is an information sheet on the prospective customer. We obtained his name, his business, his home address, his phone number, his previous banking connections usually. We also record the date of the deposit, the date of opening the account, the amount of the deposit, and make a notation sometimes regarding the

references given by the individual or company opening an account, and——

(887) Q. Excuse me. That was called an opening account sheet? A. That is an opening sheet for an account.

Q. Please continue. A. They vary according to the account. We have a new account deposit ticket, which bears the name of the new account, the date and the amount deposited. We have three signature cards which the customer signs. In those days we used a deposit receipt book, a pass book. We made a notation in the pass book as to the amount of deposit, the date, and initialed it, verify that it was received.

Q. Is that generally the procedure? A. That is generally the procedure and the forms used.

Q. I direct your attention now to the opening account sheet and the signature card. What would be on the signature card, Mr. Brennan? A. Well, the customer's signature, and then at a later time one of the secretaries or clerk-typists would transcribe the information from the opening sheet, that information that is required for the card itself.

Q. Would that be, for example, address, telephone (888) number and items like that? A. The items listed on the opening sheet.

Q. And that would be taken from the opening sheet? A. That's right.

Q. Where were the papers, the opening sheet papers, and the signature cards kept in the bank? A. They were kept on the platform area in the desks of officers and platform assistants.

Q. Would that include secretarial staff? A. Some of the secretaries could have that type of material, that's right.

Q. Was customer or potential customer access to the signature cards and opening statements restricted in any way? A. Not restricted, I wouldn't say. If a potential

customer wanted to open an account or indicated that he wanted to open an account at a future date, we might give him the signature cards and possibly even the opening sheets, or opening sheet, rather, so that he could sign the card and fill in some preliminary information on the opening sheet, if he desired to.

Q. That would you say was the practice in the bank, to permit free and easy access to the signature cards (889) and opening sheet? A. Yes.

Mr. Hallinan: I will object to the form. I think it is leading. I think we are getting into an area where I will object, your Honor.

The Court: I will sustain the objection as to form.

Q. If an unknown person came into the bank and requested signature cards and perhaps opening sheets, as a normal procedure would that person be given the items? A. Yes.

Q. Will you tell us, please, if there was any practice with regard to giving known depositors opening sheets and signature cards if requested by known depositors? A. Yes, we would give them.

Q. On these opening sheets did you have any notation printed on the sheet of "Introduced by"? A. Yes, sir.

Q. Would you tell us, please, what that means? A. Well, that in effect actually means that the account is credited to some officer or director (890) of the bank who might have been responsible for soliciting the account or soliciting an account with whom the new opening account is acquainted, associated, affiliated.

Q. Let me see if I can crystallize that, Mr. Brennan. Assume that Mr. John Smith was a known depositor in the bank and assume that Mr. John Smith brought in accounts for X, Y and Z.

How would the "introduced by" section of the opening

sheet record that? A. Well, if we didn't know, we would look up and see who had been credited with Mr. John Smith's account and mark X, Y and Z accordingly, introduced by the party who had introduced or been credited with Mr. John Smith's account.

Q. And who actually examined the opening sheet with the point of view of giving credit for the account? A. The party who opened the account, the bank person who actually opened the account with the customer or received the new account papers.

Q. Was there such a notation also, "Introduced by," on the signature cards? A. Yes. That again was taken from the opening (891) sheet record.

Q. And who mechanically transcribed the information from the opening sheet to the signature card? A. A clerk-typist or a person who would be working as a secretary normally for me who included that function among her duties.

Q. Yesterday you were telling us about the redemption forms or redemption tickets, as you called them. Where were these redemption forms or redemption tickets located in the bank? A. Well, like the opening account forms, they were retained in officers' desks and an occasional secretary's desk, possibly, and I believe that they used to be also located in the counters that the public used, the writing counters that the public used. They have a pigeon-hole arrangement below the counters were deposit slips and bond purchase applications and various papers are kept for customer convenience, and I believe that there were also located in those pigeon-holes too.

Q. Would you call those the pigeon-holes that you usually find in banks? Those pigeon-hole compartments where all the various papers are kept (892) in the bank for customer convenience, is that what you have in mind? A. Yes, sir.

Q. How many of those did you have in the bank? Not

individual pigeonholes, but how many places? A. Two counters.

Q. Would you look on the floor plan, please, and see if you can tell us where such counters were located in the bank? A. Yes, right here, the last counter (indicating).

Q. Are you pointing to the section right up close to the front of the bank? A. To the right of the entrance doors as you come in here.

Q. Any other place, Mr. Brennan? A. Here (indicating), surrounding a column, a pier from the balcony ceiling to the floor there is a glass counter there.

(893) Q. Was that, would you say, toward the rear of the bank? A. Toward the rear of the bank floor, that is right.

Q. If a person requested redemption tickets or forms, would they be given? A. Yes, sir.

Q. I mean, assuming they were not in the pigeon-hole at any one time? A. That is right.

Q. Now, Mr. Brennan, about, say, a month or two ago did Mr. Hallinan request of you that the bank send to him the redemption forms that had been used in connection with redeeming of bonds at the Pennsylvania Exchange Bank over the years 1949 and 1950? A. Yes, sir.

Q. Were these forms in addition to those that Mr. Hallinan had previously obtained in connection with the Chernoff bonds and so forth? A. Yes, sir.

Q. These were additional forms? A. Yes, that is right.

Q. Will you tell us, please, about how many—I know you didn't count them; just give us an (894) appropriation—about how many did you send to Mr. Hallinan? A. I would say several hundred.

Mr. Hallinan: Do you want them? I just want to remove something from some of them so as not to——

May the record indicate I just removed paperclips from some of them.

Q. Mr. Brennan, I show you a stack of redemption forms——

Mr. Hallinan: I think we ought to have some means for identification.

The Court: I don't know what this is all about.

Mr. Perry: I want to ask him, Judge. I just want the record to note that I am showing him something.

Q. Mr. Brennan, will you examine the papers that——

Mr. Hallinan: I would like to have them have some kind of identification.

The Court: Let us see what Mr. Perry wants.

Mr. Perry: I am going to establish the foundation for them as being bank records kept in the (895) regular course of business, and then I am going to offer them in evidence.

Mr. Hallinan: But the usual procedure is to have them marked first so that we can follow it.

The Court: Come on up here and tell me what this is all going to get us in before I spend 15 minutes marking all that paper.

(The following proceedings were held at the bench out of the hearing of the jury.)

Mr. Perry: Your Honor, we would show from this witness that actually there was no set procedure at the bank for cashing bonds, that the testimony that we have received on unknown bond owners who were brought in by known depositors that they had to be approved by the officers and that they had to be initialed. We say that it wasn't the practice.

The Court: What are these documents supposed to be?

Mr. Hallinan: They pertain to both situations, where they were accounts at the bank and other situations as we have in this case.

Mr. Perry: There is no difference actually, virtually no different situation.

(896) The Court: I doubt that I am going to receive this bunch of papers as proof of that in the absence of more foundation than I believe that Mr. Brennan is able to give you. But you go ahead and lay your foundation and we will see.

Mr. Hallinan: I want the record to reflect that I have absolutely no objection to this offer of proof.

The Court: My only objection is, if we are going to have the case cluttered with hundreds of documents that I don't see—

Mr. Perry: Perhaps I won't offer them. I will mark them for identification and get whatever testimony I——

The Court: All right, mark them collectively.

Mr. Perry: Yes. one exhibit, your Honor.

(The following proceedings were held in the hearing of the jury.)

(Defendant's Exhibit C marked for indentification.)

By Mr. Perry:

Q. Mr. Brennan, before you sent these redemption forms to Mr. Hallinan did you examine them? A. Yes, I looked through them rather hurriedly, (897) yes.

Q. And did these redemption forms include cashings by the bank both of bonds for known depositors and also of bonds for strangers who were indentified by known depositors? A. Yes, sir. Those are—any bond transaction, any cashing of bonds were included in that.

Q. Mr. Brennan, tell us from your examination of these forms did you find that there was any consistent procedure followed in the bank with reference to cashing bonds? A. With regard to the forms I found that they

were rather inconsistent in the information that they contained rather than consistent.

Q. Speak up. A. Rather than consistent, I say.

Q. Will you tell us, please, what you found with regard to whether or not these forms were initialed by anybody? A. The only initial that I could find as I went through them was mine.

Q. How many had your initials? A. Well, I didn't count them, but I would estimate probably a dozen, maybe.

(898) Q. Would you say whether or not you followed any consistent procedure in approving the cashing of bonds? A. Well, I think I did; I thought that I always initialed any redemption forms where it became necessary for me to identify the bond casher; it is possible that I did and that I didn't and that I only had that many instances occur in that time. I don't know.

Q. What would you say with regard to the other officers in the bank? Did you observe any procedure that was consistently followed? A. Well, no. And I didn't find any initials on any other bond redemption forms.

Mr. Perry: We have no other questions.

The Court: All right. Any questions?

Mr. Hallinan: Yes, I think I have several questions, your Honor.

May we have this marked, please?

(Government's Exhibit 32 marked for indentification.)

Cross examination by Mr. Hallinan:

Q. I show you Government's Exhibit 32 for identification, Mr. Brennan, which was sent down (899) with that batch which you have just spoken about. I ask you if Mr. Miller's full name does not appear on that redemption form? A. Yes, it does.

Q. Would you tell us what other information is on that

redemption form? A. There is the name of Helen Mishel where it says "Write signature"; and the amount of the bond—the amount of money given in payment for the bond, the bonds; the date of the transaction, the name of the Pennsylvania Exchange Bank and the address, and the listing on the back of the serial numbers, maturity value, date of issuance, and amount paid on each bond.

Q. What does the name James M. Miller on that redemption form indicate to you? A. It is signed on the line marked "Identification," which indicates that he approved the cashing of this bond.

Mr. Hallinan: The Government will offer this in evidence.

Mr. Perry: No objection.

The Court: All right. Received.

(900) (Government's Exhibit 32 for identification received in evidence.)

Mr. Hallinan: May I circulate it, your Honor?

The Court: Yes.

(Mr. Hallinan hands Government's Exhibit 32 to the jury.)

The Court: I think you can go ahead while they look at it, Mr. Hallinan.

Q. Mr. Brennan,——

Mr. Hallinan: I am now going to refer to page 873 of the transcript from yesterday.

Mr. Rosenblum: Just one moment.

Q. Mr. Brennan, do you remember yesterday in response to a question about the procedure followed at the Pennsylvania Exchange Bank in the cashing of bonds—I am down towards the bottom of the page—you stated—"I don't remember actually specifically receiving any written instructions covering the cashing of bonds although I know

that there was—there were probably several operating circulars in effect from the Federal Reserve Bank as agent for the Treasury Department covering the cashing of bonds, in various instances how they should be handled, how (901) they should be inscribed, signed, et cetera." Do you recall that? A. Yes, sir, I do.

Q. Now do you recall being asked this question——

Mr. Rosenblum: The same page?

Mr. Hallinan: No. I am sorry. 876.

Q. "Q Would you tell us, please, what was the practice in the bank, if there were any, with relation to cashing bonds for strangers where the stranger is introduced by a known depositor of the bank?"

Do you recall being asked that question? A. Yes, sir.

Q. Do you recall giving this answer:

"There would be no specific instructions, I would say. If a customer were to introduce a person who was the payee on a bond and said that he wanted to identify him so that he could cash his bond, that usually is enough identification to my way of thinking and I believe to anybody who worked in the bank at the time. Firstly, we don't wish to embarrass our customers by asking for additional specific identification from the stranger or the person that he introduces, and I might make a notation on the (902) redemption form that our customer, say it might be John Smith, introduced John Brown, who cashed the bonds."

Do you recall that answer? A. Yes, sir.

Q. Were you familiar with any of these circular letters from the Treasury Department, Mr. Brennan? A. That's what I tried to indicate yesterday, that I wasn't thoroughly at all familiar with these circular letters, that I had been orally instructed on many of the operating practices of the bank when I first came to the bank in June

of 1948 and for a good period thereafter. I have had occasion, naturally, to check since then and have seen some of these operating circulars that I referred to.

Q. Were you familiar in any way with the circular letters either by someone telling you orally or by reading the circular letters during the time which you have been testifying about here? A. You mean from the period of 1949 and '50. No, only through verbal instruction.

Q. Did you know at that time that the very procedure you have described did not conform to the Treasury Department circulars? (903) A. No, I didn't know at that time, and I might say that in answering you yesterday I tried to tell you——

Q. You did not answer me. A. I mean Mr. Perry.—what might have been the practice in the bank.

Q. Might have. Do you recall what the practice was in fact, Mr. Brennan? A. What was the practice in the bank. I will put it that way.

Q. You recall what was the practice? A. Yes.

Q. Would it be fair to say that in many of these areas you testified in effect there was no practice? A. Maybe there is a confusion of terms. When I say "practice," what was the practice in the bank, I mean what might have actually happened from day to day in the various transactions wherein bonds were cashed.

Q. Let me ask you this: From your own knowledge, do you know that it was the practice of the rest of the officers that worked in the bank in the same period of time to not embarrass and therefore not inquire of the relationship between (904) the customer and the owner of the bonds? A. Well, I guess the best way I can answer that is I don't know what every officer might have done or thought on the subject, but it was my impression that you do not try to—I shouldn't say try—you do not embarrass a well known and probably respected customer of your bank who may bring in a friend of his unknown to

our bank and say that he is John Brown and he has known him and would we please cash his bond, we may not embarrass Mr. Brown by making him produce various items of identification. That is what I am trying to say.

Q. Did you know then and do you know now that in substance the Treasury Department in its circular advises it should be done discreetly but it should be done; do you know that? No, sir.

Mr. Perry: I object.

Mr. Hallinan: We are talking about the relationship between the customer and the owner of the bond.

Mr. Perry: I do not know that the circular letter says more now than Mr. Brennan said.

(905) The Court: Do you have the circular letter?

Mr. Hallinan: Yes.

The Court: Read the language, then. That is in evidence, isn't it?

Mr. Hallinan: Yes. I cannot seem to place it. May I have Mr. Malinky review it while I proceed to something else?

The Court: All right.

Q. You limited one of your answers just a minute ago, "I can tell you what I did," and you did not know what the other officers were doing.

Well, then, do you in fact know of any practice at the bank or are you telling us what you in fact did, the procedure that you followed?

Mr. Perry: I object to that, your Honor. I think Mr. Brennan testified at least in part after he examined these redemption forms of '49 and '50, which is the best record of what the practice was.

The Court: I am not sure of that. I will let the

witness answer. It does not call for a yes or no answer.

(To reporter) Read the question and let (906) the witness answer as best he can.

(Question read.)

A. I would say about that that I was under the impression since I had been instructed to identify bonds in certain cases and also provide an initial on the redemption form, that other officers and people who identified bondholders were doing the same thing. After I looked at these redemption forms, it doesn't stack up that way. It doesn't appear to be what might have actually happened at the time.

Q. You mean officers not identifying? A. Yes.

Q. Signing? A. Yes.

Q. Mr. Brennan, I ask you to look at these again and tell me how many of these pertain to accounts at the bank and how many pertain to situations where there was no account at the bank? A. If I am to answer this at all, I would have to do it from memory, the names I knew of bond cashiers who were customers at the bank.

Q. You have just testified that from examining those you not only found a lack of consistency but (907) inconsistency. I am only asking you to do that now a little more specifically. Would you do that, please? A. I gave my answer from the standpoint that as I went through them hurriedly the only initial that I saw was my own and therefore I couldn't have been the only person who ever approved cashing of bonds for outside customers. There must be some others amongst these and if they did not show initials, then apparently officers were not following the practice that I followed.

Q. When you talk about practice, could that possibly be accounted for, the absence of initials on most of those, by reason of the fact that they were accounts at the bank?

Can't you determine that by looking at those and seeing what is checked off— A. The majority——

Q. The majority what? A. Are customers.

Q. I have clips so it will be easy for you. Not this one, but all the other clips in here are ones that you initialed, so you can find them quickly. A. I see.

(908) Q. Let me do it. I show you out of Defendant's Exhibit C for identification a redemption form dated May 2, 1950, in the name of John O. Beau. Will you look at that redemption form; please? Yes.

Q. Can you tell me whether or not that was an account at the bank? A. To the best of my recollection, this would not have been an account at the bank.

Q. And that one you initialed? A. Yes, sir.

Q. I show you a redemption form dated December 1, 1950, in the name of Mrs. Muriel McGoldrick. I ask you if your initials appear on that? A. They do.

Q. To the best of your recollection, was that an account or not an account at the bank? A. Mrs. McGoldrick's husband had an account at the bank. Mrs. McGoldrick, to my recollection, did not.

Q. To your recollection, did Mrs. McGoldrick come in with the bonds alone? A. I don't believe so. I think she was in the company of her husband.

(909) Q. And in that circumstance you initialed the bond redemption form? A. That's right.

Q. I show you a bond redemption form, again dated December 1, 1950, in the same name, and I ask you if your initials appear on that? A. It does.

Q. That is Mrs. McGoldrick's again? A. That's right.

Q. I show you a bond redemption form dated 12-19-50 in the name of Florence McCue. Does your initial appear on that? A. Yes.

(910) Q. Was that an account at the bank or not an

account? A. That woman was, I think, a co-signer on a personal loan in the bank, and she was known to me. She was a cousin of Mr. Gallagher, who was vice-chairman of the Board of the bank, but she was not a depositor in the bank and was, therefore, not known to the tellers.

Q. But you initialed that? A. I initialed it, identifying her to the tellers.

Q. Let me follow that up. When the person came in and was not known to the tellers, the owner of the bonds with a customer of the bank assume they went directly to a teller, would the teller refer them to an officer at that point? A. In this case if Mrs. McHugh, she knew me and always came directly to me.

Q. I am not asking you about Mrs. McHugh. Did you hear my question? A. You say that you are not asking me about Mrs. McHugh. You mean any customer, any outsider——

Q. Coming in with a customer, they go directly to the teller. Would the teller refer them to an officer? A. No.

(911) Mr. Hallinan: I do not have any more questions, your Honor, but I would like a few exhibits marked.

May we have this marked 33, please, and then mark the others?

(Government's Exhibits 33 through 42, inclusive, for identification, marked.)

Q. Mr. Brennan, do the bond redemption forms today still come in the pad form that they came in in 1949 and 1950? A. Yes, sir, they do.

Q. I show you Government's Exhibit 33 for indentification. I ask you if this is what you have referred to as

one of the customers' tables in the bank? A. Yes, it is the one at the rear of the banking floor.

Q. Is that in substantially the same condition as it was in in 1949 and 1950? A. Substantially the same, yes.

Q. Is the practice with respect to redemption forms being available to customers the same today as it was in 1949 and 1950? A. I would say so.

Q. Would you point out in that picture where the redemption forms are in pad form, please? (912) A. I couldn't point that out to you.

Q. Would you try, Mr. Brennan? A. I wouldn't be sure if I did.

Q. Were you sure when you testified before——

Mr. Perry: I object, your Honor. The man cannot do it on the basis of a picture. It does not call for this remark.

Mr. Hallinan: He can try, your Honor.

Mr. Perry: He said he could not. I have no objection to him trying.

The Court: I will sustain the objection as to form.

Q. Will you look at the picture for a minute? A. Yes, sir.

Q. You have testified that bond redemption forms were kept in that customers' table in 1949 and 1950. Will you tell me where they were kept in there in 1949 and 1950? A. I couldn't tell you beyond the fact that if they were kept in there, and I said I believe they were kept in there, they would have been in one of these pigeon holes, possibly two.

Q. Were they in pad form? A. Yes, they always have been in pad form.

(913) Q. And you say the practice is the same today as it was then? A. Yes.

Q. Can you see any pads in that picture? A. Honestly, I wouldn't know if it was padded or not.

Mr. Hallinan: I will offer this in evidence and then I would like to circulate it.

Mr. Perry: I object to it.

The Court: Let me look at it.

(Exhibit handed to Court.)

The Court: Mr. Brennan, do you know what material there is kept customarily at this table?

The Witness: Yes, sir.

The Court: Can you tell us slot by slot what is in there?

The Witness: No, I can't. I can only tell you the type of materials that might be kept.

The Court: Not what might be kept. What Mr. Halinan is trying to determine is what you know was kept there, not what you speculate might be there.

Can you go down slot by slot and say what type of deposit slip or what type of withdrawal slip would be there in the various slots?

(914) The Witness: Your Honor, I can tell you the kinds that would be there, but not by slot.

The Court: What do you know would be there?

The Witness: There would be savings account deposit slips, regular checking account deposit slips, special checking account deposit slips, applications for purchase of savings bonds—let's see what else—advertising material on various services offered by the bank, and I would include these pads that Mr. Hallinan speaks of, the redemption forms.

The Court: They are there today?

The Witness: I believe so, sir.

The Court: And there would be approximately two cubby holes for each one, would you say, or

for the more frequently used ones there would be more than one cubby hole?

The Witness: That's right.

The Court: I think I will not take the offer at this time.

Q. I show you Government's Exhibit 34 for indentification and ask you if that is a photograph representing a view of the tellers' cages. A. Yes, sir

(915) Q. Is that substantially the same as the cages existed in 1949 and 1950? A. Yes, sir.

Q. And 1948. I show you Government's Exhibit 35 for identification and ask you what that represents. A. This is the area in which Mr. Miller's desk was located in that period of time.

Q. I show you Government's Exhibit 36 for identification and ask you what that represents. A. This is a view of the platform area of the bank from front to back.

Q. I show you Government's Exhibit 37 for identification and ask you what that is, what that represents. A. This is a view of the platform area from back to front.

Q. I show you Government's Exhibit 38 for identification and ask you what that represents. A. This is a picture of the banking floor of the bank from front to back.

Q. 39 for identification; I ask you what that represents. A. It is a picture of the banking floor of the bank looking toward the rear half of the platform area (916) and also including some view of the balcony or credit department section.

Q. And 40 for identification, what does that represent? A. This is a view from the floor of the bank looking toward the tellers' cages covering about two-thirds of the area of the tellers' cages here.

Q. And does 41 represent a closer view of the tellers' cages? A. Yes, sir, it does.

Q. 42, what does that represent? A. This is a view of the banking floor from the rear looking toward the front of the bank. It includes the first half—the first section of the platform and the brief section of the tellers' cages.

Q. I ask you with respect to all these exhibits, 34 through 42, do they reflect substantially the same condition that the bank was in in 1948, 1949, and 1950? A. Yes, sir.

Mr. Hallinan: The Government will offer Exhibits 34 through 42. I might add solely as visual aids I think they will aid considerably the jury in understanding the facts of this case, your Honor.

(917) Mr. Perry: Your Honor, we would have no objection, but there is one problem, and I think probably it can be resolved very simply. A great deal of this largely is immovable furniture, so we have no objection to that, the fence and so forth. But we notice chairs here, small chairs, like chairs we have right here. And I would think that these —perhaps I would ask the witness whether they had any fixed position or whether they might be moved. It is just for the chairs. I have in mind the chairs are not supposed to indicate where they actually were——

Mr. Hallinan: I can clarify that by a couple of questions. I might be able to clarify it.

By Mr. Hallinan:

Q. You indicated that 35 was a picture of approximately where Mr. Miller's desk was. You see the three chairs in front, on the outside of the railing? A. Yes.

Q. Do you recall that these chairs in that number were there during 1948, 1949 and 1950? A. I would say so, yes.

Q. In approximately that position? A. Yes.

Q. And 37, would you say the same about that with (918) respect to the chairs? A. These chairs (indicating)?

Q. Yes. On the inside of the railing on the platform as you have referred to it? A. Yes. Those chairs were normally in that position and still are.

Q. And what about 38? A. Yes.

Q. 39? A. Yes.

Q. And 42? A. Yes.

Mr. Perry: We have no objection.

The Court: All right.

Mr. Rosenblum: May we take a moment to show them to the defendant, please?

The Court: All right.

Mr. Rosenblum: Mr. Hallinan——

Mr. Hallinan: Yes, I am arranging them for you.

The Court: Mr. Hallinan, the other one that you had identified I think that can be included——

Mr. Rosenblum: That is out. That is not offered.

The Court: Wouldn't that be included in the (919) tender for the same purpose?

Mr. Hallinan: Yes.

The Court: What I did was reject it at the time you offered it for the suggested purpose that you offered it for.

Mr. Hallinan: All right. I will re-offer it.

The Court: As part of the entire group.

Mr. Hallinan: Yes.

Mr. Rosenblum: May I inquire, your Honor, as to when these pictures were taken?

The Court: Yes.

Mr. Hallinan: It is noted on the back of each one.

Mr. Rosenblum: 1956. 8-23-56.

Mr. Hallinan: Yes.

Mr. Rosenblum: Is this being offered as a true representation of the picture at the time of the occurrences in this case?

The Court: I think it is.

Mr. Hallinan: Yes. I have laid the proper foundation.

The Court: That is what I understood to be the purpose of the offer.

Mr. Rosenblum: I was going to direct the Court's (920) attention to 35 and the testimony of Miss Driscoll—she had a different name then—Skotchdopole, as to where she said her desk was, and I bring that to Mr. Hallinan's attention to see whether or not he can develop where the particular desks were at the time of the occurrences in this case.

Mr. Hallinan: For that particular purpose, the location of her desk, I am not offering it for that. The general import of my offer is that these have been testified to substantially reflect the condition of the bank in the different parts as it then existed. I just offer them as visual aids to the jury so that they can better see the testimony.

The Court: To the extent that the oral testimony as to the various transactions is in conflict with the pictures, you don't suggest that this in any way varies or contradicts the oral testimony.

Mr. Hallinan: No.

Mr. Rosenblum: I see. No objection.

(Government's Exhibits 33 through 42 for identification received in evidence.)

The Court: Are you going to show these to the jury, Mr. Hallinan?

Mr. Hallinan: Yes, I would like to.

(921) The Court: The only two that I can't figure out are 36 and 37. I am sure the witness told you

what they were. I think the other two are self-explanatory. But you had better tell the jury which way they face.

Q. Will you tell us what 36 is, again, please? A. It is a view of the platform area of the bank from the front looking toward the rear of the platform.

The Court: May I see it again?

Mr. Hallinan: Yes, sir (handing). I think it will help if they keep in mind, and it has been testified to, that the balcony is in the rear of the bank.

The Court: In other words, some of the officers sat with their back to the front door, is that right?

The Witness: Yes, sir.

The Court: All right. That is what I didn't understand.

Q. And 37 is a view of the platform looking out to the door of the front of the bank? A. That is right.

The Court: And some of the officers also face the front?

(922) The Witness: That is right.

The Court: Mr. Miller faced the front?

The Witness: He did.

The Court: All right. Give them to the foreman one at a time, and then as he passes them along they can see them.

Mr. Hallinan: May I just briefly describe them again? I won't go at length, but just briefly.

The Court: All right.

Mr. Hallinan: 33 is the customers' table. I think that would be an adequate description.

Mr. Rosenblum: The what?

The Court: Customers' table.

Mr. Rosenblum: Have you described the two

that the jurors have now? I am trying to visualize it in my mind.

Mr. Hallinan: I just described the one.

Mr. Rosenblum: What was that? I see there are two going along and I was just wondering whether you omitted one.

Mr. Hallinan: Exhibit 35 is approximately where Mr. Miller's desk was.

The Court: What is the one, the first one, Mr. Hallinan, that your No. 3 has?

(923) Mr. Hallinan: This is one view of the tellers' cages. The view looks to the front of the bank.

36 is a view of the platform looking to the rear of the bank (handing).

37 is a view of the platform looking to the front of the bank.

38 is a view of the rear of the bank showing both the balcony and the railing of the tellers on the right and the railing separating the platform from the main floor on the left.

39 is a picture showing the rear of the bank and a portion of, an outside view of, the platform.

40 is a picture of the rear of the bank showing the portion of the outside of the tellers' cages.

41 is a closer view of the tellers' cages from the inside.

Exhibit 42 is a view of the front of the bank, the entrance to the bank.

The Court: Now, how do the jury feel about a recess? You have had a very relaxed morning looking at things half the time instead of having somebody talking to you. The trouble is that I don't smoke, so that I am not doing justice to those of you who do.

John J. Brennan—for Defendant—By the Court

A Juror: Five minutes?
The Court: Surely. We will take a short recess.
(Recess.)
(924) (Jury in box.)
Mr. Hallinan: I just have a few more questions.
The Court: All right.

Q. Mr. Brennan, would you recapitulate for us briefly how the signature card is made out and and how the opening sheet is made out and in what order? A. Normally the order is to make the opening sheet up first. If a customer would have obtained the cards earlier and brought them in already signed, then the signature would have come first on the card, but normally you get the information from the prospective customer and record it on the opening sheet and then have the customer sign the signature card.

Mr. Hallinan: May I have these marked, please.

(Government's Exhibits 43 and 44 marked for identification.)

Q. Mr. Brennan, I show you Government's Exhibit 43 for identification and I ask you what it is (handing to witness)? A. This is an opening sheet for an account called "I. Mishel, Special," a regular checking individual account.

(925) Q. I show you Government's Exhibit 44 for identification and ask you what it is? A. That is one of the signature cards for that account.

Mr. Hallinan: The Government will offer these in evidence.

John J. Brennan—for Defendant—Cross

Mr. Perry: No objection.
The Court: Received.

(Government's Exhibits 43 and 44 for identification received in evidence.)

Mr. Hallinan: I am just going to ask a few questions on that, and I will be through.

Q. I show you again 43 in evidence. Whose initials appear at the top of that opening sheet? A. On the first box on the left Mr. Miller's, and then skip a box—it is blank—and Mr. George P. Vassil and then my own in the last box on the right.

Q. Do you know whose handwriting the first written matter is in, "I. Mishel, Special"? A. That is my handwriting.

Q. Do you know whose handwriting the handwritten notation "Liquors" opposite "Business" is in? A. That's mine.

Q. And whose handwriting is the business address (925a) in? A. Mine.

Q. And did you make the ditto marks under that for home address, same as business address? A. Yes.

Q. And did you also write in "Other affiliation and bank accounts"—not that matter but opposite that printed matter, "P.E.B. Other Accounts"? A. Yes.

Q. The initials "J.W.M.," who put those on the sheet? A. I did.

Q. What does "J.W.M." stand for? A. James W. Miller.

Q. And that is opposite the printed notation "Introduced by"? A. Yes, sir.

Q. Where did you get that information? A. I knew that Mr. Miller had been given credit for the original Irving Mishel account, and therefore recorded that on there.

Mr. Rosenblum: I cannot hear the witness.

The Court: Read the answer.

The Witness: I said I knew that Mr. Miller (926) had introduced the original Irving Mishel account and therefore had credited Mr. Miller with this Mishel account.

Q. And who wrote the initials "JJB"? A. I did.

Q. And "Account Opened," the numbers on there, did you put those on there also, "1/16/50"? A. Yes.

Q. And opposite "Amount" $7500? A. Yes, sir.

Q. I show you Government's Exhibit 44 in evidence, which is the signature card, I. Mishel, Special. Do you know whose signature that is, who wrote that "I. Mishel"? A. I believe that Mr. Mishel wrote it.

Q. Do you recognize that as his handwriting? A. Right now I don't remember his handwriting that well to say, but I must assume that that is his handwriting, yes.

Q. You must assume. Do you recognize it as his handwriting? A. I say that I don't remember Mishel's signature right now.

Q. Who normally would put the typewriting on (927) this signature card? A. The typist-clerk or secretary whose duty it was to complete the records of the account.

Q. It would be, then, done from this opening account sheet, in this case Government's Exhibit 43? A. Yes, it would be copied.

Q. Do you recognize the only other handwriting on this opposite "Phone" "Br-9-3343"? A. No, I don't, but the customer could have entered it there.

Q. After these two documents, the opening sheet and the signature card, are completed, is this opening account sheet circulated to the officers whose initials appear above and which you have identified? A. Yes, sir.

Q. Is that after both documents have been completely

filled out? A. Yes, sir. It is usually the next day or the day after that.

Mr. Hallinan: May I circulate these?
The Court: All right.
Mr. Hallinan: That is all I have of this witness.

(Government's Exhibits 43 and 44 handed to jury.)

(928) The Court: Any other questions?
Mr. Perry: Yes, your Honor.

Re-direct examination by Mr. Perry:

Q. Mr. Brennan, I direct your attention to the redemption forms that comprise Defendant's Exhibit C for identification and ask you whether or not these are records kept by the Pennsylvania Exchange Bank and whether or not in the operation of the business of the Pennsylvania Exchange Bank it was the business of the bank to keep such records? A. Yes, sir, they are.

Mr. Perry: I offer these in evidence at this point.
Mr. Hallinan: I have no objection, your Honor.
The Court: All right, received.
Mr. Perry: May we keep them with the general marking "C," your Honor?
The Court: All right.

(Defendant's Exhibit C for identification received in evidence.)

Q. Mr. Brennan, was there a time within the last week or so that we sent to you photostatic copies of the forms comprising Defendant's Exhibit C? (929) A. Yes, sir.

Q. Did we ask you at that time to check these forms against the bank records and ascertain for us as best you could which of the names on the various redemption forms dealt with the cashing of bonds for non-customers? A. Yes, sir.

Mr. Perry: May I have this marked for identification.

(Defendant's Exhibit D marked for identification.)

Q. Mr. Brennan, I direct your attention to the photostatic copies of redemption forms that make up Defendant's Exhibit D for identification and ask you have you ever seen those before? A. Yes, sir, I have.

Q. Will you examine the back of them and tell me whether or not any notations appear thereon? A. The back of each one?

Q. Yes, please. A. (After examining) Yes.

Q. Do you find any letters on there? A. Yes.

Q. Were they put on there by either yourself (930) or some persons at the bank? A. I didn't put them on, but they probably were put on by a person at the bank because there were several of us who culled these things out.

Q. These forms that comprise that particular exhibit for identification, were they singled out from the rest of the forms and returned to us especially? A. Yes, sir, that's right.

Q. Would you mind telling me, please, what you found about those forms that comprise Defendant's Exhibit D for identification? A. Well, we found that these were not customers of our bank.

Q. Excuse me. When you say "these were not customers of our bank," would you please tell us what you are referring to? A. The names inscribed on each redemption form, the various names on the respective forms,

these, to the best of our knowledge, were not customers of the bank. These names are the names of the persons who cashed bonds at some time in that period.

Q. But you say they were not customers of the bank? A. That's right.

(931) Q. So far as your records reflect? A. That's right, yes, sir.

Mr. Perry: Your Honor, rather than take the time to individually single out at this point the original forms, redemption forms, that correspond to these photostatic forms, may I offer the photostatic copies in evidence now with the understanding as soon as we have a break, without taking the time of the Court, we will substitute the originals for them?

Do you have any objection, Mr. Hallinan?

Mr. Hallinan: I do not have an objection. I do not get the purpose of these singled-out documents, but I am not going to press any objection.

The Court: All right. I did not clearly get from the witness what these are. Exhibit D is a group of redemption forms for payments to persons other than customers; is that correct?

Mr. Perry: Yes, Judge, and. your Honor, what we propose to do is by permitting the jury to examine them later when they are in evidence, to determine what method or procedure of identification was followed as would appear from what appears on the face of the redemption form. That is our purpose.

(932) Mr. Hallinan: Then I would object to that unless we get the people in here who handled this transaction. This man has said that he has no personal knowledge of these particular——

John J. Brennan—for Defendant—Re-direct

Mr. Perry: May I say we are dealing with official records of the bank, your Honor?

Mr. Hallinan: There is no magic in that term, your Honor. They must be relevant and material.

The Court: I will sustain the objection at this time. You do not want to circulate them now anyhow?

Mr. Perry: No.

The Court: I will hear you at the beginning of the afternoon session before we get the jury back.

By Mr. Perry:

Q. Mr. Brennan, you are acquainted, are you not, with the use of these bond registers at the bank? A. Yes.

Q. I am referring now to Government's Exhibits 13 to 18, inclusive. A. Yes, I am familiar with the bond register.

Q. Would it be a fair summary to say that these reflect the bonds that have been sold at the times indicated with the numbers of the bonds and the amounts (933) involved? A. It reflects those that have been cashed.

Q. I am sorry. Yes, you are right, cashed. A. Yes, during the period covered there.

Q. And the last column here says the "Name and Address of Person Redeemed For" and is it the fact that under that heading is included the name of the person in whose name the bond is made out? A. Yes, sir.

Mr. Perry: Would you mark this E for identification.

(Defendant's Exhibit E marked for identification.)

Q. Mr. Brennan, I direct your attention to Defendant's Exhibit E for identification and ask you whether or not that is not one of the redemption forms that you have

identified as being a bank record? A. Yes, it is a bank record. You mean of the photostats that I just saw?

Q. Yes. A. Yes.

Q. Will you tell us, please, what appears on the face of that redemption form? A. The date of December 22, 1949, and where it (934) says "Received from" it says "Penn." The amount received is entered as $183.12. Where it says "Please make payment by," the box is X'd in where it says "Cash." Two $25 bonds. Where it says "Print name," the name of Edward F. Pyle is printed, and Edward F. Pyle's signature is written below that and an address of 531 West 49th Street.

Q. In other words, from the face of the form, in whose name would you say the bonds were registered? A. Edward F. Pyle.

Q. I now direct your attention to Government's Exhibit 13 in evidence, which is the register of bonds, and tell me what you find, please, as evidencing the ownership of the bonds, of the particular bonds represented on the Edward Pyle redemption form, as appears on the register?

Mr. Hallinan: I will object to this question on these grounds, your Honor: There has been no testimony on this particular subject from this witness. The only testimony in this record thus far is that the notations on the bond register are made from the bonds themselves. I know what he is trying to show and I think it is incompetent on the record as it now stands.

The Court: Will you read the question back?

(Question read.)

(935) The Court: I think I will sustain the objection.

Mr. Perry: As to form?

The Court: No, as to substance. In other words I don't see the corelation between the redemption

form and the register that you assume underlies your question.

Mr. Perry: Well, I think the testimony of Virginia Graef and the other tellers as to the procedure they said was followed is in issue here.

Mr. Hallinan: But they testified, Virginia Graef, testified, and she made that very explicit both on direct and cross, the notations were made from the bond. If they want to bring the bonds to show something I won't object. But this is incompetent by its very nature on the record as it stands.

Mr. Perry: That is true. There are a lot of generalities. We show on the question of what procedure was followed as Mr. Brennan indicated——

The Court: He doesn't know what procedure was followed. He is drawing inferences.

Mr. Perry: He is the manager of the bank. He indicated that there was relatively little if any set procedure followed. Mr. Hallinan went into specific (936) instances of showing what was done in those instances. We would like to show your Honor from specific instances that there was no set procedure followed, just as——

Mr. Hallinan: They have to show that by contradiction, and as far as they have gone there is no contradiction. It is incompetent in its very nature. If they want to bring bonds in and show the notation, to show the notation is not the same, I won't object. But they can't do it with incompetent material.

Mr. Perry: We show that the names that appear in the instances I called to Mr. Brennan's attention, the several instances I will call if your Honor will permit, would show that the names on the redemption forms are not the names that appear in the bond register. It certainly indicates a lack of any—

Mr. Hallinan: I suppose my objection is really moot now, but I am going to press it anyway.

The Court: I don't think it is moot. I will sustain the objection. In other words, I won't take proof of an isolated instance where something didn't happen as proof that there wasn't any practice. In other words, a single situation would be enough.

Mr. Perry: I wonder, Judge——

The Court: There is a limit as to how far I am going to travel on this subject. I will sustain the (937) objection.

Mr. Perry (to the Clerk): Will you mark this E-1 or will that upset your marking?

Mr. Hallinan: I am a little fearful, your Honor, that this record is going to get confused. I would suggest that we——

The Court: If you had objected to this bundle when it went in, it wouldn't be so confused.

Mr. Hallinan: Perhaps it is my fault, but I would suggest, if it can be remedied at all, that we remedy it now by separating the particular exhibit he wants marked for the record and have another exhibit number and mark it for identification.

The Court: We will be able to get along. Mark this one.

(Defendant's Exhibit F marked for identification.)

Mr. Hallinan: I may be stuck with this ultimately.

The Court: Don't worry about it yet. I am stuck with it now. Go ahead. I am not going any further with this, Mr. Perry. I think that we are——

Mr. Perry: My thought would be to mark them and then your Honor rule.

The Court: Let us cross the bridge on whether (938) I am going to let them in and then——

Mr. Perry: I don't understand what procedure you want me to follow, your Honor.

The Court: I will stop this line of proof right now. I will hear you when we resume at 2 o'clock as to whether I should go any further. I don't want to ask the jury to leave now and hear you now.

Mr. Perry: I am a little at a loss, your Honor.

The Court: Are we without any further questions?

Mr. Perry: We end with that at this time.

The Court: All right. Get the next witness.

(To the witness) You be on tap and come back here this afternoon if Mr. Perry wants you.

Mr. Perry: After lunch, please.

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(939) KENNETH G. WILMOT, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Rosenblum:

Q. What is your business or occupation, Mr. Wilmot? A. I am in the banking profession.

Q. And can you tell us about when you first entered that profession? A. About 1918.

Q. And will you tell us, please, the names of the banks you were associated with from that time on? A. I was associated with the American Bank and Trust Company of New Haven, Connecticut.

Q. From when to when? A. From 1918 to 1922. Or—yes. To 22.

Q. And then? A. Then I came to New York and became associated with the Irving Trust Company.

Q. In what capacity? A. As a teller.

Q. That is, in 1922? A. In 1922.

Q. And for how long a time did you stay with— A. I was with them for five years.

(940) Q. How long were you employed by the Irving Trust Company? A. Five years.

Q. That would bring it up to approximately 27? A. Yes, sir.

Q. Then where did you go from there? A. I left the business and for two years I studied voice training, until 1929.

Q. Then after you finished studying voice training, what did you then do? A. I became associated with the Chase National Bank.

Q. In what year would that be? A. 1929.

Q. In what capacity? A. As a teller.

Q. And for how long a time did you stay as a teller with the Chase Bank? A. I was with them until the beginning of 1946.

Q. And then where did you go? A. I became associated with the Pennsylvania Exchange Bank.

Q. Will you tell us, please, in what office you entered? (941) A. I entered in the office which was primarily at that time at 26th Street and Eighth Avenue, which has subsequently moved to 38th Street and Eighth Avenue.

Q. In what capacity did you enter as an employee of the Pennsylvania Exchange Bank? A. As a teller.

Q. How long a time did you stay at the particular branch you just indicated? A. I was——

Q. I think you said it was the 26th Street branch. A. At that time it was 26th Street and Eighth Avenue.

Q. At that time? A. At that time.

Q. How long did you stay and what did you do? A. I was with them at that office until August of that year.

Q. August, 1946? A. Yes, sir.

Q. What did you do then? A. Then a branch office was opened at 20 West 48th Street, and I was sent there as a teller.

Q. Are you still at that bank? A. Yes, sir.

(942) Q. Did the time come when you became the head teller? A. Yes, sir.

Q. Can you tell us about when you became head teller? A. Sometime in 1947.

Q. Will you tell us, please, whether or not you are acquainted with the practice of cashing Government bonds at the bank you just referred to? A. I am.

Q. Did you as a teller, did you have prior experience in the other bank that you referred to? A. Yes, sir.

Q. Can you tell us whether or not the cashing of Government bonds is the duty of a teller? A. It is.

Q. Tell us, please, what the duties of a teller are in an instance where a non-customer unknown person to the bank comes in to cash a bond; what is the duty of the teller? A. It is to require positive identification from that person that he is the actual owner of the bonds in in question.

Q. So that even if he is not a customer and is not (943) known, if he does produce identification satisfactory to the teller it is his duty to cash the bond? A. Yes, sir.

Q. Is that right? A. Right.

Q. Will you tell us whether or not the teller must be satisfied from what is shown to him that he ought to cash the bond for that person?

Mr. Hallinan: I object to the form of this and the whole interrogation on the grounds of relevancy, your Honor. It is not the situation we are confronted with here at all.

Mr. Rosenblum: It is leading up to——

Mr. Hallinan: I don't care what it is leading up to. It is irrelevant on its face.

The Court: Yes. I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Now, let us take a case where a non-customer unknown to the bank comes into the bank to cash a bond and is identified to a teller by a customer of the bank. Will you tell us what the duties of a teller are under those circumstances? A. The teller is obliged to cash the bonds.

Q. Is that his primary duty if he is satisfied (944) under the circumstances that the identification of a customer is sufficient to satisfy him?

Mr. Hallinan: I will object to the leading, your Honor.

The Court: Sustained.

Q. Would you tell us, please, whether or not in the instance I gave where a non-customer unknown is identified by a customer known to the teller, and I think you said the teller had a duty to cash the bond——

Mr. Hallinan: I object to the form of the question, your Honor, and it is leading. It is very simple to put a direct question on this.

The Court: Sustained.

Q. Will you tell us whether under those circumstances the Pennsylvania Exchange Bank——

The Court: Which circumstances?

Q. (Continuing) —it was the duty, the ones that you testified to about before when you said it was the duty of the teller to cash the bonds.

Mr. Hallinan: No. That is three times. I renew my objection again, your Honor.

Mr. Rosenblum: I submit to your Honor this witness did testify under what circumstances the teller had a duty to cash the bond.

(945) Mr. Hallinan: Then we have the testimony.

Mr. Roseblum: It is leading to something else. I am using that as part of the question.

Mr. Hallinan: I object and press my objection.

The Court: If you want to have the question and answer read back to incorporate it, I will——

Mr. Roseblum: Please. May we have it read back?

The Court: Can you find the last answer that I allowed?

(The last two allowed questions and answers read.)

The Court: What is your next question?

Q. Now, under the last circumstance, when he is identified by a customer, it was just read to you, was it the duty of the teller to refer the transaction to an officer? A. No.

Q. Can you tell us whether or not you are acquainted with the redemption forms? A. Yes, sir.

Q. Can you tell us whether going back to the period of December, 1949, and January and February, 1950, whether or not the redemption forms in blank form were (946) available on the customers' table? A. They were.

Mr. Rosenblum: May we have the letter, please, of July, 1950?

Mr. Hallinan: The first one from the Treasury Department; right?

Mr. Rosenblum: Yes.

(Mr. Hallinan hands Mr. Rosenblum.)

Mr. Rosenblum: Will you give me the enclosures, please?

Mr. Hallinan: Oh, the schedule (handing).

Q. Mr. Wilmot, I show you Government's Exhibit No. 20 in evidence, a letter from the Treasury Department to

J. W. Miller, President Pennsylvania Exchange Bank, dated July 19, 1950, and ask you to look at that and acquaint yourself with it. A. (after examining) Yes, sir.

Q. I show you Government's Exhibit 20-A in evidence, and also 20-B in evidence and ask you to look at those and acquaint yourself with them. A. (After examining) Yes, sir.

Q. I ask you, first, after directing your attention to the letter dated July 19, 1950, and ask you whether or not sometime thereafter Mr. Miller made the letter and (947) these two schedules available to you? A. He did.

Q. I direct your attention to the letter which is 20 and the part referring to bonds "of which photographs of bonds, one or more, for each day of payment are enclosed to assist you in Item 2 above", and ask you whether or not those bonds which were at that time enclosed were also made available to you. That is the photostats. A. The photostats, yes.

Q. What is your answer, sir? A. Yes, sir.

Q. Now, will you tell us whether or not you then made an investigation—I withdraw that.

Please tell us what Mr. Miller told you he wanted you to do regarding the data which you just testified about. A. He requested that I check with the tellers and ascertain if any of them were familiar with that transaction.

Q. Was that the Chernoff transaction? A. Yes, sir.

Q. Will you tell us, please, what you did? A. I questioned the tellers that were employed by the bank at that time as to whether they had a recollection (948) or not of the transaction. And they said they did not recall.

Q. Now, did you find that some of the tellers who were employed at the time of the Chernoff transaction were not in the employ of the bank at the time of your investigation? A. Yes, sir. They were not.

Q. Did you follow them up by going to their homes or some place? A. No, sir.

Q. Now, did you, after you made the investigation you told us about, report your findings that you referred to to Mr. Miller? A. I did.

Mr. Rosenblum: I have no further questions.
Mr. Hallinan: I have.

(949) Cross-examination by Mr. Hallinan:

Q. Mr. Wilmot, when did you get the instructions from Mr. Miller to check with the tellers? A. After he received that letter from the Treasury Department.

Q. Search your memory and tell me how long after. You looked at the letter? What is the date of the letter? A. I cannot tell you offhand.

Q. Do you know what year it was? A. I don't recall.

Q. Was it 1952, perhaps? A. May I see the exhibit?

Q. Perhaps, in a minute. Was it in 1952, Mr. Wilmot? A. I do not recall.

Q. Was it 1953, Mr. Wilmot? A. I do not believe so.

Q. It was before that? A. I believe so.

Q. Was it 1948? A. I do not recall.

Q. Was it 1949? A. I do not recall.

(950) Q. You may look at the letter (handing). Does that refresh your recollection? A. According to the date on the letter, yes.

Q. But independent of the letter it doesn't refresh your recollection, is that right? You say that is the date because that is the date on the letter, not because you have, after looking at that, an independent recollection of that transaction that you have just testified about; is that correct? A. I would have to search my memory further to know just what the date was.

Q. Well, you take all the time you want and you do exactly that.

Are you searching your memory? A. Yes, sir.

Kenneth G. Wilmot—for Defendant—Cross

Q. When after the writing of that letter did Mr. Miller tell you to make an investigation of this case? A. It was probably within a week or two.

Q. Sometime in July, then, of 1950; is that correct? A. Yes, sir.

Q. All right. Tell me the first thing that you did in that investigation. (951) A. I questioned the tellers.

Q. All right, let us just stop there for a moment. What teller did you question? A. There was only one teller employed at the time.

Q. Precisely. You didn't question tellers, did you, Mr. Wilmot? A. I questioned tellers, yes.

Q. You did. Who did you question? A. The people that were employed at the bank at the time.

Q. Who were they, Mr. Wilmot? A. I do not recall their names at present. I know I questioned one teller specifically.

Q. In what order did you examine or interrogate the three men tellers? A. I believe Mr. Lucey was the only teller at the time of this occasion.

Q. What do you mean when you say you examined the tellers? Who else did you examine? A. There were other tellers employed subsequent to the time of the leaving of the other tellers.

Q. So you examined, then, in connection with bonds that they had cashed, people that were employed subsequent (952) to them? Is that what you are saying? A. I asked them if they might have had any information as to what had happened previously.

Q. Would you expand on that just a little, Mr. Wilmot? What do you mean by that? A. They might have received some information from other people.

Q. What other people? A. People that had left.

Q. What people that had left? A. The two tellers.

Q. What were their names? A. Frank Horan and Virginia Graef.

Q Who did you examine in connection with the knowledge they might have that Horan and Graef had? A. I do not recall the people at present.

Q. Are they people still at the bank? A. No, sir.

Q. Getting back to the investigation, what is the first step you took in the investigation after Mr. Miller asked you to make it? A. I asked the teller who was employed at the time——

Q. Mr. Lucey? A. Mr. Lucey.

(953) Q. What did you ask him? A. If he had any recollection of the transaction.

Q. How did you know that he was involved in the transaction? A. He was a teller at the time and it might have been possible that he handled the bonds.

Q. You tell us exactly what you said to him as best you can recall it and what he said to you. A. I asked him if he had any recollection of cashing any bonds with the name of Chernoff, and he said he did not know, have any recollection of them.

Q. And when was that, Mr. Wilmot? A. I cannot tell you the exact date. It was when Mr. Miller gave me the letter to investigate it.

Q. You knew at that time, did you not, that the bank had photostatic copies of these bonds, Mr. Wilmot? A. They were shown me.

Q. Did you have them in making your investigation? A. No, sir.

Q. Didn't you know that Lucey had something to do with cashing those bonds? Wasn't Lucey's name on the bond itself? A. I don't recall.

(954) Q. Let us see if we can refresh your recollection.

(Pause.)

Mr. Hallinan: Your Honor, is it close enough to 1 so we can suspend? Evidently I left——

Colloquy of Counsel

The Court: We will resume at 10 minutes after 2.

Mr. Hallinan: May I request the Court to instruct this witness not to communicate with anyone about this case during the luncheon recess?

The Court: I will so instruct the jury, of course, not to talk about the case; and Mr. Wilmot, don't you talk to anybody about the case during the noon recess, either.

(Adjourned to 2.10 p. m.)

AFTERNOON SESSION

(955) (The following proceedings were held in open court in the absence of the jury.)

The Court: Mr. Perry, do you want to tell me what you are going to establish with this basket of papers you have?

Mr. Perry: Your Honor, as you know, the Government witnesses testified that they couldn't—you know, the tellers Horan, Graef and Lucey, that they understood the practice in the case of strangers, even though they were introduced by known depositors, that they were supposed to send them over to an officer to be checked. That is one thing. On the other hand, we have produced testimony that there wasn't any such practice; while it may have been done in cases, there wasn't any such practice. And this last witness indicated at least he would have been justified in cashing them himself. Also, cross-examination of Mr. Brennan he indicated that, you know, either way it would be worked, and Mr.

Hallinan called specific instances to his attention about initials on forms to try to elicit from him, or at least to leave the impression, as I gather, that he himself knew that (956) whenever he was cashing bonds for someone who was unknown, that there were supposed to be initials on the forms, things of that nature. At least I think that picture is——

The Court: I don't know what Mr. Hallinan was trying at the time, but Mr. Brennan himself said that it was his personal system to do it, so I don't know that Mr. Hallinan can generalize beyond that just from his cross-examination. I don't see how we can take a group of records and start to speculate as to a practice on the basis of it. Mr. Brennan himself knew relatively little about this part of the business at that time. I will take his testimony, though, for whatever it is worth. But I don't want to start speculating that because a group of records have initials or don't have initials that there was a practice, because we don't know the circumstances as to each of those redemption forms. And unless you know the circumstances under which each was taken I don't think you can start generalizing very much as to what the practice was. I think that I would be disinclined to go into that because of that.

(957) Mr. Perry: For the record, may I make my position a little clearer, Judge? It will take a couple of minutes.

The Court: Go ahead.

Mr. Perry: Defendant's Exhibit D is a batch of forms. I have not counted them, your Honor. I have been working on it now. I would say maybe 30, around that, 35, maybe more, a few more, a few

less. I can count it if it becomes important. But those redemption forms were used in connection with the cashing of bonds for non-customers.

Now, it would seem to me, Judge—I may be off on the testimony—it seems to me on the basis of the testimony produced on the Government's case it would be useful for us to show that in those instances—25, 30, 35—that these were of non-customers and they were cashed—by whom we don't know. At the moment at least we don't know—but nevertheless they were cashed at least without anyone initialing them, and it would seem to me that there would be no system, no fixed system, in the bank that they are to be initialed.

The Court: I think the trouble is that the re so many—until you know all the circums es (958) around each one, I would hesitate to draw or let the jury draw any inference from them, and I think that their usefulness is virtually nil and I think the whole bunch ought to be stricken from the record. I just do not see any purpose which they serve.

Mr. Perry: Mr. Hallinan did actually explore into them. I did not. I kept them general. He went into specific instances.

The Court: He went into Mr. Mishel's own account.

Mr. Perry: No.

Mr. Hallinan: I went into some that Mr. Brennan had initialed.

Mr. Perry: I did not go into specific instances. He did. It is an attempt to answer the impression, the inference——

Mr. Hallinan: It is an attempt to point out that what Mr. Brennan said was specifically the fact. He is mainly testifying about what he did.

The Court: He said that he himself initialed it as a rule. That was his own personal system, and apparently he concludes from this batch of documents that others did not; but I say unless (959) we know the circumstances under which the others acted, I do not think we can speculate as to what their practice was.

Mr. Hallinan: That is right, and I should like to further state I limited my examinations to ones he personally had knowledge of with his initials on them. It might well be from this batch of exhibits that a practice was ignored, if we knew the circumstances. I think we have testimony on both sides now as to the practice, and I don't think—well, I am not going to elaborate on your Honor's reasons. They are precisely the Government's.

Mr. Perry: If your Honor chooses not to have us receive them in evidence, I am going now to mark them and perhaps I will make an offer anyway. I spent an hour on them.

The Court: You go ahead and make your offer. I would much rather you put your time on some other phase of the case, but I have no control over that. You go ahead, Mr. Perry, and make your offer of proof if you think it should be further elaborated, but we won't take any more time now with the exhibit.

All right, let us get the jury.

Mr. Perry: We respectfully except.

(960) The Court: All right.

(Jury enters courtroom.)

KENNETH G. WILMOT resumed.

The Court: Mr. Hallinan, if you have found those papers you were looking for, we will go ahead.

Mr. Hallinan: Yes, I have.

Cross examination continued by Mr. Hallinan:

Q. Mr. Wilmot, how long have you known Mr. Miller? A. Since I started working for the bank.

Q. And what was that date once again—1926, was it? A. No, sir; 1946.

Q. I am sorry. 1946.

Were you very friendly with him while you were working at the bank? A. In a social way, you mean, or as an employee to employer?

Q. Let us take employee to employee. A. I would say not any more than any of the other employees.

Q. Were you friendly with him in a social way? A. No, sir.

Q. Do you like the opera, Mr. Wilmot? (961) A. Yes.

Q. Did you receive tickets for the opera from time to time from Mr. Miller while you were at the bank? A. Yes, sir.

Q. How frequently would that be? A. Once, possibly twice, in a season.

Q. Over how long a period of time, years? A. Over a period of five years, possibly.

Q. You know, don't you, that Mr. Miller did not give tickets to the opera to anyone else at the bank? A. I don't know that.

Q. I would like to take you back again briefly to the conversation with Mr. Miller sometime in July of 1950.

Would you tell us again briefly what Mr. Miller said to you when he asked you to make this investigation? A. That was all.

Q. Would you just repeat it again briefly, please. A.

He asked me to question the tellers or people involved as to if they had any recollection of the transaction.

(962) Q. Did he tell you what the investigation was for? A. No more than what I got from the letter itself.

Q. You said before at that time that he made available to you Government's Exhibits 20 and 20-A and 20-B, the schedules attached to 20; is that correct? A. Yes, sir.

Q. Did he make any other document available to you at that time? A. No, sir.

Q. From any other source in the bank before you started your investigation, did you get any other documents? A. No, sir.

Q. I think before the luncheon recess you told me that you could not recall whether you had seen the bonds or not; is that correct? A. That is right.

Q. Do you now have a recollection that you did not see the bonds? A. Before lunch I was under the impression that you were referring to these exhibits and not the bonds or photostatic copies of them.

(963) Q. Was there a practice at the bank for tellers who cashed bonds to put either their initials or their names on the bonds? A. Yes, sir.

Q. And when Mr. Miller asked you to make this investigation, you were aware of fact, weren't you? A. Yes, sir.

Q. And Mr. Miller wanted you to investigate who cashed these bonds and the circumstances; is that correct? A. If anybody was familiar or knew of the transaction.

Q. Would you look at Government's Exhibit 20. Does it refer to photostatic copies of bonds in there? A. (After examining) Yes, it does.

(964) Q. Did you ask Mr. Miller, when he asked you to make an investigation, if you could have the photostatic copies of these bonds? A. No, sir.

Q. You knew, didn't you, at that time, that the bonds, as I asked you before, would have the name of the teller on it? A. Yes, sir.

Q. Did you ask anyone else to make the bonds available? A. No, sir.

Q. Photostatic copies. Why not? A. I didn't think it was necessary at the time.

Q. Would it help you to locate and narrow down, right from the start, the tellers you would have to interview? A. Yes.

Q. What was the procedure that you had in mind when you started your investigation? How were you going to go about your investigation? A. As I started before, just ask the teller or tellers that might be there if they were familiar with the transaction at that time.

Q. That would take a lot more time, wouldn't it, (965) than going to the bonds and find out who the tellers were originally? A. Possibly.

Q. You are familiar, are you not, with—you have already mentioned them in another respect—with the bond redemption form that accompanies the bond when it is cashed? A. Yes.

Q. Are you familiar with the fact that the teller enters in the upper left-hand corner the amount paid out on the bond? A. Yes, sir.

Q. Did you ask Mr. Miller, when he asked you to make the investigation, for the bond redemption forms? A. No, sir.

Q. Did he mention them? A. No, sir.

Q. Did you make any attempt to locate the bond redemption forms? A. No, sir.

Q. Were they in the bank at that time? A. I presume so.

Q. Would that have assisted you in your investigation? (966) A. It might have and it might not.

Q. Well, let me get rather specific. Would it have

helped you if you took these eight redemption forms to a teller and the first question you asked was, "Is that in your handwriting—the amount paid out on the bond?" Would that have assisted you? A. Yes.

Q. Did you want to find out all the details for Mr. Miller of the cashing of these bonds? A. Yes, sir.

Q. And you made no effort to locate the redemption forms? A. No, sir.

Q. Now, after you left Mr. Miller, what was the first step you took in your investigation? A. I asked the people in the department who handled cashing of bonds if they were familiar with any names or having cashed any bonds for that particular party.

Q. By Department, you mean people who were employed as tellers? A. That is right.

Q. Who was the first person you saw? A. The only one who could possibly have cashed (967) them who is at present employed by the bank was Mr. Lucey.

Q. Why do you say that, the only person that could have cashed them? A. Because he was the only teller at that time who had been employed at that time.

Q. During that period of time? A. During that period.

Q. Will you tell us once again what you said to Mr. Lucey and what Mr. Lucey said to you? A. From what I can recall, I asked him if he knew or had handled any transaction similar to that or a transaction of cashing bonds for the particular party. And he said he did not recall.

Q. Did you mention the name Chernoff specifically? A. I do not recall.

Q. Did you show him the letter? A. No, sir.

Q. Did you show him the schedule letters, 20-A? A. No, sir.

Q. Did you show him the schedule that was 20-B? A. No, sir.

Q. If you can't recall that you mentioned the name

Chernoff and you didn't show these documents to him, which you have testified are the only ones you had at (968) that time, how do you know he knew what you were talking about? A. Well, I must have mentioned the name Chernoff, then.

Q. What did you do after you finished with—withdrawn. Did you point out to Mr. Lucey that there were 59 bonds listed on these schedules? A. No, sir.

Q. All you asked Mr. Lucey then was, and you think now that you mentioned the name Chernoff to him, you must have, from what I have just gone over with you, you say, you just asked Mr. Lucey if he knew anything about the cashing of these bonds, is that correct? A. Right.

Q. You could have checked the story, couldn't you have? A. Yes.

Q. How? A. By going through the redemption forms or if the photostatic copies of the bonds were available and findings out whose initials happened to be on those bonds.

Q. Did you make that step? A. No, sir.

(969) Q. Why not? A. I relied on his word and his statement that he could not recall any transaction for that.

Q. You didn't go over it very thoroughly with him, did you? A. No, sir.

Q. So we can clarify this: To your recollection, now, are these documents, 20, 20-A and 20-B the only documents that you had in your possession all during the period of your investigation? A. Yes, sir.

Q. You had no other documents? A. No, sir.

Q. All right. What was the next thing you did after you interrogated or interviewed Mr. Lucey? A. I reported back to Mr. Miller.

Q. Didn't you tell us this morning that you interviewed some of the tellers? A. Possibly others, not primarily

in the tellers' department, or the people that had been hired subsequently.

Q. I don't know what you mean by not necessarily people not in the tellers' department. Who else would you have interviewed? A. There were several people; there is the note (970) teller department, the loan and discount connected with the department, all at one side of the office.

Q. Would they have something to do with the cashing of these bonds? A. No, sir.

Q. Why did you interview them? A. In case they might have heard something or known something about it.

Q. I ask you again, before you reported back to Mr. Miller who was the next person you saw after you saw Mr. Lucey? A. I do not recall.

Q. Did you in fact see anyone else? A. There were other tellers there, yes.

Q. Did you in fact see or talk to anyone else? If my question isn't clear, you tell me. A. There were other tellers at the time.

Q. Yes. I think— A. After I stated I believe that Mr. Horan and Miss Graef had left. I just asked them. Do you want me to continue?

Q. Yes. I have cut you off twice. Yes, please continue. A. (Continuing) If they knew of anything that (971) others might have said, Mr. Horan or Miss Graef, to them about any transactions of bonds that had been cashed. There was no logical explanation for my doing so because they would have no bearing on the cashing of any bonds.

Q. There is no logical explanation, because you were in fact never requested to make an investigation; isn't that the fact, pure and simple, Mr. Wilmot? A. No, sir. I was asked to find——

Q. There isn't much logic in your whole story, is there,

Mr. Wilmot? A. I was asked a question to find out if anybody recalled any transaction and the redemption of bonds.

Q. I will ask you again, who was the next person you saw after you saw Mr. Lucey? A. I do not recall.

Q. Did you in fact see anyone? A. Yes.

Q. Was it one person? A. I do not recall.

Q. Was it two persons? A. I do not recall.

Q. Was it three persons? A. The same answer.

(972) Q. It would be the same if I went up to twenty-five? A. We don't have that many people.

Q. So I couldn't go up that high. Would it be the same if I went up through every employee of the bank— A. No.

Q. —at that time? A. No.

Q. Well, where would it change? Who do you remember that you spoke to? A. I do not recall offhand.

Q. All right. But I think you did state you did not interview Mr. Horan? A. I did not.

Q. He was no longer employed at the bank; correct? A. That is correct.

Q. You did not interview Miss Graef? A. No, sir.

Q. She was no longer employed at the bank? A. Right.

Q. I think you mentioned their names this (973) morning. When did you first learn of their names as being connected with these bonds? A. Possibly a few days ago.

Q. How did you learn that? A. From one of my superiors.

Q. Who is that? A. Mr. Brennan, I believe.

Q. Did you discuss the case with him? A. Slightly.

Q. All right. There came a time, you say, when you reported back to Mr. Miller. How long after he gave you the assignment to investigate the facts surrounding the cashing of these bonds did you report back to Mr. Miller? A. Possibly that same day; I do not recall.

Q. You probably spent one day investigating the facts of this? A. Not the entire day, no.

Q. Less than a day? A. Probably.

Q. About a half a day? A. It wouldn't take that long to question one or two people.

Q. In fact, from what you have told us so far, (974) it wouldn't take more than three minutes, would it? A. That is right. It might take four or five minutes.

Q. Four or five. Or probably ten, maybe, on the outside? (No answer)

Q. Did you make a report to Mr. Miller? A. Yes, sir.

Q. Was that report written? A. No, sir.

Q. It was oral? A. Yes, sir.

W. What did you say to Mr. Miller and what did he say to you? A. As I recall it, I said the party that I questioned had no recollection of these bonds being redeemed. And that was all.

Q. Did Mr. Miller comment? A. I believe not.

Q. You told him the party examined knew nothing about it? A. The party or parties I questioned.

Q. After you made your report what if anything did you do? Did you further investigate the facts? A. No, sir.

(975) Q. Did you do anything with respect to this case? A. Not after I made my report, no, sir.

Q. And that was, according to your recollection now, the same day sometime in July? A. Yes, sir.

Q. After the letter of July 19 was received? A. Yes, sir.

Q. Did Mr. Miller ever discuss the facts of those cashings with you at a subsequent time? A. Not that I recall.

Q. You had no discussions with Mr. Miller? A. No, sir.

Q. Did you ever discuss the facts of this case with a Secret Service agent? A. Not that I recall.

Q. Did you ever discuss the facts of this case with a Mr. Dorff from the law firm of Dorff & Levy? A. Not that I recall.

Q. Did you ever discuss the facts of this case with a

lawyer by the name of Levy from the firm of Dorff & Levy? A. No, sir.

Q. Did you ever discuss the facts of this case (976) with a man by the name of Weiss from Dorff & Levy? A. I do not recall that.

Q. I am going to read to you a paragraph from a letter which is in evidence, Mr. Wilmot, and then I am going to ask you a few questions about it.

The letter is dated June 4, 1952. It is on the stationery of Dorff & Levy. The paragraph reads as follows:

"We have been advised that a person"——

And I would ask you to follow this carefully.

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was. Mr. Mishel introduced (977) that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

Did your investigation disclose any such matter as I have just read to you? A. No, sir.

Q. You never gave this information to anybody from the law firm of Dorff & Levy, did you? A. I do not recall having. I might have.

Q. When did you come into possession of this knowledge that I just read to you? A. When you read the letter now.

Q. Then you could not very well have discussed it with Mr. Dorff or Levy, could you? A. I do not think so.

Q. Is this time the first time that you are aware of the

facts, the alleged facts, contained in that second paragraph? A. I don't know.

Q. Would you try and search your memory and see if you heard them at any other time? A. That is some time ago, that letter, and I cannot recall.

Q. But this certainly does not reflect the (978) results of your investigation, does it? A. I stated my investigation and apparently it doesn't coincide with that.

Q. Now, Mr. Wilmot, you gave testimony this morning as to the duties of tellers. Let us assume this case: A customer comes into the bank with the owner of registered United States Savings Bonds, Series E. They go to the officer.

What, if anything, would the officer do, assuming further that there is a redemption form presented to the officer? What, if anything, would the officer do with the redemption form? A. He might okay it for cashing bonds.

Q. How would he okay it for cashing bonds? A. By his initials.

Q. Can you tell us what the purpose of this redemption form is? A. It's for records of knowing who we cashed bonds for.

Q. And knowing what else? A. That is primarily all.

Q. Is the bank ever interested to know what employees of the bank were involved in the various transactions at the bank? (979) A. That would show on the bonds, who was responsible for having cashed any bonds.

Q. And what happened to the bond very shortly after it is cashed, Mr. Wilmot? A. The bonds are redeemed once a month through the Federal Reserve Bank.

Q. That is right. So that is not the permanent record of the bank, is it? A. No, sir.

Q. What is the permanent record of the bank reflecting the cashing of the bonds? A. We have a register denoting the serial number of the bond, the face value of the bond and who it was cashed for.

Kenneth G. Wilmot—for Defendant—Cross

Q. So this is really superfluous, the redemption form? A. In a way.

Q. Does the redemption form reflect anything that the bond register does not? A. It might show who identified the owner of the bond.

Q. And wouldn't the bank be interested in that in the event they had to investigate, as you were called upon to investigate in this very case, Mr. (980) Wilmot? A. The redemption forms would show if the customer himself cashed the bond or if he introduced a stranger to have the bond cashed.

Q. So it should reflect that knowledge, should it not? A. Yes.

Q. As a permanent record of the bank? A. Yes, sir.

Q. Mr. Wilmot, from your experience at the bank I am going to ask you several questions about a few of these exhibits.

The first one is Government's Exhibit 5-A in evidence. I show you that redemption form and I ask you if you went through the records of the bank and you pulled out that redemption form, who would you say identified the registered owner of those bonds from that record? A. A person by the name of Thomas Young.

Q. I ask you the same question with respect to Government's Exhibit 6-A in evidence. A. The same, Thomas Young.

Q. I ask you the same question with respect to Government's Exhibit 8-A in evidence. (981) A. The same, Thomas Young.

Q. So in all those cases, that would indicate to you that a person by the name of Thomas Young had been the identifier; is that correct? A. That is correct.

Q. Now, you have testified that you are familiar with the duties of the various tellers and their procedures and so forth.

I show you Government's Exhibit 2-A in evidence and

I show you the handwritten notation in ink on the top, "Miller."

Now, assume for the moment that Virginia Graef wrote that name "Miller" on there. From your experience, why would she have written that on there? A. As a means of identifying a party known to Mr. Miller.

Mr. Hallinan: I have no further questions.
The Court: Anything else?

Redirect examination by Mr. Rosenblum:

Q. At the time when you made your investigation, did you know that the letter advised the bank that a Secret Service agent was coming to the bank to conduct an investigation (handing document to witness)? A. Yes.

(982) It is right in the letter, isn't it? A. Yes, sir.

Q. Was your investigation anything more than a perfunctory investigation? A. No, sir.

Q. You say you talked to persons who made up the tellers at the time? A. Yes, sir.

Q. And the only one who was there at the time of the investigation who was at the bank as a teller at the time of the cashing of the Chernoff bonds was Lucey? A. Yes, sir.

Q. And you spoke to him and you reported to Mr. Miller as to what he said? A. Yes, sir.

Q. Did you understand it was your duty to go out to the home of Horan to make this investigation? A. No, sir.

Q. Or to the home of Miss Graef? A. No, sir.

Q. Did you know whether or not the Treasury Department would want you to go out to investigate those people and go to their homes?

(983) Mr. Hallinan: I will object to that, your Honor. It is his understanding of what he under-

stands the Treasury Department wants. He is doing it at the instruction of Mr. Miller.

Mr. Rosenblum: Mr. Miller said, "Make an investigation."

He sees a letter and he knows an agent is coming. He has a right to express his opinion as to how far he should go.

The Court: I will sustain the objection as to form.

Mr. Rosenblum: Exception.

Q. I again bring to your attention from Exhibit 20, that is, Government's Exhibit 20 in evidence, the part here which reads:

> "Photographs of bonds, one or more, for each date of payment are enclosed to assist you on item 2 above."

From that did you understand that all the Chernoff bonds were supposed to be there or just some? A. Some.

Q. Think back, Mr. Wilmot, and see whether or not you can recall that not a batch of bonds as those that I hold in my hand here covering 1 to 8 made up (984) of 59 bonds, but see whether or not you can recall that there was attached to the letter in addition to the two items which are the schedules referred to as 20-A and 20-B, see whether you can recall whether or not in fact when Mr. Miller gave you the letter he had attached to it the photostats of those particular bonds which were part of it.

Mr. Hallinan: I will object on the ground it is leading. He has made it very easy for the witness.

The Court: It is all right. Let us see if the witness can answer.

A. He would not have those bonds. They were not attached to the letter.

Q. You would say they were not attached? A. No.

Q. You say even though the letter said, "We attach hereto those bonds"? A. That is correct. The photostat copies can be in the possession of Mr. Miller, but he would turn over the letter to me without that copy.

Q. In other words, it is your recollection he did not turn over the bonds? A. Yes.

(985) Q. I thought this morning when I examined you you were of the recollection that he did turn over the bonds. That is why I asked you this again. This goes back now for how many years—about six? A. I believe that was in 1950. Yes, six years.

Q. That would be a little more than six years? A. Yes.

Q. You really have a positive recollection as to whether he did turn over some bonds or he didn't at that time?

Mr. Hallinan: Is this impeachment, your Honor?

The Court: I will take it. Overruled.

A. After six years, I can't say.

Q. You are not really sure either way? A. I am not really sure.

Q. You said you were studying voice for several years? A. Yes, sir.

Q. And did you know that Mr. Miller was a subscriber to the opera? A. I did.

(986) Q. And were there occasions when he gave you some opera tickets when he could not use them? A. Right.

Q. Do you know whether or not he also gave some to his secretary? A. I believe he did.

Q. Did he give you those opera tickets so that you could now testify as you have testified? A. Certainly not.

Mr. Rosenblum: No further questions.

Kenneth G. Wilmot—for Defendant—Re-cross

Re-cross examination by Mr. Hallinan:

Q. But you don't dislike Mr. Miller for giving you the tickets, do you, Mr. Wilmot? A. No, sir, because we were both interested in the same thing.

Q. I understand that. Mr. Rosenblum asked you was it your understanding that you had to go to the home of Mr. Horan. That wasn't your understanding, was it? A. No, sir.

Q. You did not have to make a long trip out to where Mr. Horan lived? A. No, sir. It wasn't my province to go out to his home.

(987) Q. You did not have to go to Miss Graef's home, did you? A. No, sir.

Q. Or to either of their places of employment, did you? A. No.

Q. You had a phone in your office, didn't you? A. That wasn't within the province of my investigation.

Q. You had a phone in your office, didn't you? A. There were several in the office.

Q. The province of your investigation, then, was what? You tell me. A. To question the person or persons that had the duty of cashing bonds.

Q. Why wasn't it in your province to interview Horan and Graef? A. Because that was up to the Secret Service Department when they were entering the investigation.

Q. Will you elaborate on that? What do you mean by that? A. Pardon me?

Q. Would you elaborate on that. I am not quite sure I know what you mean by that, that was up to the (988) Secret Service. Who told you it was up to the Secret Service? A. The Secret Service was coming in to investigate.

Q. Coming in to the bank? A. Yes.

Q. From that you concluded it was their province to see Mr. Horan and Miss Graef? A. It wasn't up to me to investigate them.

Q. You just told me it was up to you to investigate the facts of the cashing of these bonds. A. For those that were employed by the bank at that time.

Q. Who told you that? A. That was my understanding.

Q. Where did you get that understanding from? A. As head of the department.

Q. As head of the department? A. Yes, sir.

Q. Did you get that understanding from Mr. Miller? A. I have been given certain jobs to do.

Q. Go ahead. A. And I have to use my mind, my knowledge of what comprises that work.

(989) Q. It was your understanding, then, that you were only to investigate part of the facts; is that correct? A. For those that were presently employed.

Q. You had in the bank at that time both Mr. Horan's and Miss Graef's home addresses, did you not? A. I presume so.

Q. Don't presume. You know as a fact that the bank maintains for several years thereafter the addresses of former employees, don't they? A. Yes, sir.

Q. And in many instances the addresses reflect new employment of where they are employed, does it not? A. Yes, sir.

(990) Q. You knew then, didn't you, that you had available the addresses of former employees? A. Yes, sir.

Q. You have told me before that you knew to go to Lucey because he at that time was the only employee who was employed at the bank during the period of these cashings, is that correct? A. That is right.

Q. So if you wanted to, it wasn't a long trip to somebody—

Mr. Rosenblum: I object to the form of that question.

The Court: Sustained.

Mr. Hallinan: I have no further questions.

Mr. Rosenblum: No further questions.

The Court: All right.

(Witness excused.)

Mr. Rosenblum: May I just go to the witness room for a moment, and then I will come back.

(Mr. Rosenblum left the courtroom and then returned.)

Mr. Rosenblum: Mr. Miller, will you take the stand?

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(991) JAMES W. MILLER, the defendant, called as a witness on his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Rosenblum:

Q. Mr. Miller, will you tell us, please, what is your occupation at the present time? A. I am in the confectioner's and baker's specialty supply business.

Q. What is the name of your company? A. Haug & Company, Incorporated.

Q. Haug & Company? A. Yes, sir.

Q. Where is their office? A. 99 Wall Street.

Q. How old are you, Mr. Miller? A. I am in my 60th year.

Q. Are you a married man? A. Yes, sir.

Q. You have a wife? A. Yes, sir.

Q. A child? A. Yes, sir.

Q. How old is she? A. Twenty-eight.

(992) Q. She lives at home with you and your wife? A. Yes, sir.

Q. Now, tell us, please, about yourself, first starting from the time you were born. Where were you born? A.

I was born in Cartersville, Georgia, a small town near Atlanta.

Q. Tell us whether you had your schooling down there, in a general way. A. Yes, I went to school in Augusta, Georgia, Birmingham, Alabama, and finished grammar school when I was twelve years of age, in Birmingham.

Q. And from then, what schooling did you have after that? A. I went through high school, business college, and four years at the American Institute of Banking, here in New York City.

Q. Will you tell us, please, at what age you went to work? A. Twelve years of age.

Q. Will you tell us what you did? A. I worked as a table boy in an ice cream restaurant parlor so I could go through high school.

Q. That was after you graduated from public school? (993) A. Yes.

Q. And went into high school? A. Yes.

Q. And was that just a part time job? A. Well, yes, it was from 4 in the afternoon until midnight and from midnight to—from noon to midnight on Saturdays and Sundays.

Q. Will you tell us what you did after that? A. The last year in high school I went to work for the Chattanooga Times, in the mail room.

Q. The what? A. Chattanooga Times?

Q. Chattanooga? A. Chattanooga, Tennessee, yes. In the mail room. I worked from midnight until about 4:30 in the morning.

Q. And did you complete your Chattanooga High School? A. Yes; I was 16 when I finished there.

Q. What did you do after that? A. I got a job with a surveying crew out in the mountains. I had tuberculosis. So, after two years I was all right. I came back to Chattanooga. I went through business college, got a job with the N. C. and St. Louis Railroad, worked as a secre-

tary to the freight agent, (994) and from there I got a job with an accounting and industrial inspection company. They had an office in Chattanooga.

Q. What work did you do? A. Well, I was a secretary to the manager of the office. And then they moved me to Philadelphia as secretary to the general manager of the company.

Q. Were you married by that time? A. Not yet, no.

Q. I see. A. Then they moved me to Pittsburgh as assistant manager of the office. Then I got married in Pittsburgh. That was 1918. Then they moved me to Baltimore.

Q. When you say they moved you— A. The company that I was working for, the same company.

Q. You were assigned to a new area? A. Yes. Baltimore.

Q. Will you tell us what type of work you were doing, or were you continuing to do the same work? A. Well, I was assistant manager, but then they put me on the road selling the services in Virginia and Maryland and West Virginia. Then I got a little tired of that traveling all the time, away from my wife (995) five days a week, so I gave that up. I went to Poughkeepsie, New York, and I got a job with the New Haven Railroad as secretary to the division superintendent.

Q. Can you give us either your age or—I want to fix milestones in this thing. Can you tell us what age you were at that time? A. Twenty-three.

Q. What was the year that this occurred? A. That was in 1920.

Q. About 1920? A. It was 1920.

Q. You were then twenty-three years of age? A. Yes.

Q. Will you tell us, please, what you did after that? A. I wanted to get in the banking business for many years. So, we had saved up a little money, and my wife and I decided we could take a chance and come to New York.

Q. In what year did you come to New York? A. 1920.

Q. 1920. That is the same year you referred to? A. Yes.

Q. When you were twenty-three years old? (996) A. That is right.

Q. Will you tell us, please, what you did in New York? A. I came to New York and I got a job in the Federal Reserve Bank.

Q. Doing what? A. I started out as a money counter.

Q. As what? A. A money counter.

Q. Money carrier? A. Money counter.

Q. Money counter. A. Yes. But I was taken off of that work and put in charge of the collections, certain type of collections called bill of lading collections. I stayed there for five years. It was during that time that I went to the American Institute of Banking at night for four years.

Q. That means you were there from 1920 to 1925? A. That is right.

Q. Is that right? A. Yes.

Q. You say it was during that time you went to the American Institute of Banking? (997) A. That is right.

Q. Did you say that was a night course? A. Night course, four years, yes.

Q. Did you complete the course? A. Yes.

Q. Will you tell us, please, what you did after that? A. Well, while going to the Institute I met an officer of another bank, and he asked me at one time if I would like to consider coming over to his bank. And, actually that is what I was training for and looking for. So he took me up to the bank. It was a small bank on West 23rd Street.

Q. What was the name of that bank? A. Century Bank.

Q. Century Bank? A. Yes. It was owned and controlled by Professor Pupin. So, he made me a very nice offer and said that—to induce me to come there he would make some stock in the bank available. He asked me how much I had. And I told him $2000.

So he said, "I will get you Miss Jenkins' stock, she wants to get out of the bank, anyhow; you can pay $2000 down and pay the rest," he said, "whenever (998) you want to."

So I went with the bank assistant cashier and a director of the bank.

About three years later we had built the bank up from, I think, deposits of $300,000 to $3,000,000. And we then, Professor Pupin and all of us, we sold the bank, and at a very nice profit.

Q. That is you sold your stock interest in the bank at that time? A. Yes, sir. Everybody in the bank sold it.

Q. And you continued on with the bank after that? A. Yes, I continued with the new people.

Q. With the what? A. With the new people who bought the bank.

Q. Keep your voice up so all the jurors can hear you. With the what? A. The new group of people who bought the bank.

Q. Will you tell us what you did? What post did you hold? A. Well, I was assistant cashier. The bank was later merged with the Interstate Trust Company and I was assistant vice president, and I was——

Q. What year was that? A. Oh, I would say about '28.

(999) Q. Will you tell us, please, what you did after that? A. '29. Well, '28 or '29.

The bank was merged into the Interstate Trust Company, and I was moved to the 42nd Street office of the Interstate Trust Company. I stayed there——

Q. Did you continue as an officer of that bank? A. I was head of that office. That was the largest office they had. They had nine offices——

Q. I was directing your attention as to whether or not you continued in that office. But you did continue as an officer, I think you said? A. Yes, yes. I was assistant vice-president in charge of the 42nd Street office.

Q. When you moved to the other one you continued— A. Continued to be assistant vice-president, yes.

Q. Will you tell us what you did after that? A. That bank was merged with, let's see, Interstate Trust, Equitable Trust, Chase National Bank. It all took place rapidly, one month after another.

Q. You drop your voice and I can't hear you and I don't think all the jurors can hear you. Keep your voice up so that all the jurors can hear you. A. I say the bank was merged, Interstate Trust (1000) Company was merged with the Equitable Trust Company and Equitable Trust Company was merged with the Chase National Bank. And at that time——

Q. Did you continue on with the banks— A. Yes.

Q. The banks? Did you continue on with the banks which resulted from the merger? A. Yes, sir.

Q. You were up to the Equitable Trust Company. A. Chase National.

Q. Chase National Bank. A. Yes.

Q. Will you tell us, please, what your position with the Chase National Bank was? A. I was Assistant Vice President and actually I resigned just within a couple of weeks while the merger took place, so I didn't work with the Chase very long. I had really already turned in my resignation before the merger was effected.

Q. What did you do after that? A. I went to the Pennsylvania Exchange Bank.

Q. Now, let us see if we can fix that time when you went with the Pennsylvania Exchange Bank. A. It was 1930.

(1001) And will you tell us, please, what position you occupied in the Pennsylvania Exchange Bank when you first went with them? A. I was vice-president.

Q. And with what office did you go when you first went with the Pennsylvania Exchange Bank? A. They had

only one office at that time, the 26th Street and Eighth Avenue.

Q. How long a time did you continue with the 26th Street office? A. Until 1946.

Q. 1946. Tell us, please, what happened at that time. A. Well, in 1946 I built this office here, 48th Street, and I moved up there.

Q. You say "I built this office here." What do you mean? A. Well, the bank built the office.

Q. Were you a stockholder at the time? A. Yes.

Q. When did you become a stockholder in the Pennsylvania Exchange Bank? A. I would say a few years after I went there.

Q. Which would make it approximately what year? (1002) You went with them in 1946, you say? A. Sometime between 1930 and 1935.

Q. You bought stock in the Pennsylvania Exchange Bank between 1930 and 1935? A. I believe so, yes.

Q. That was before you went with them? A. I was there in 1930.

Q. Oh, you went with him—excuse me—you went with them in 1930? A. Yes.

Q. A few years after that you became a stockholder? A. Yes.

Q. About 1933 or 1935? A. Yes.

Q. And then you say in 1946 the new bank was built? A. That is right.

Q. And will you tell us whether you moved up to the new bank which was built? A. Yes, that is right.

Q. Where was that bank? A. 20 West 48th Street.

Q. What post did you hold at the time you went (1003) up to the bank at 48th Street in 1946? A. I was still vice-president.

Q. You were still vice-president at the time? A. Yes, in 1946 I was still vice-president.

Q. All right. Now, will you tell us, please, for how long a time you continued holding the office of vice-president? A. Until 1947.

Q. And will you tell us what happened at that time? A. I was elected president.

Q. And when you say president, will you tell us whether or not by that time the branch at 26th Street had been moved, too? A. No, not at that time.

Q. When was that branch moved? A. About '48 or '49.

Q. And was that the time the 26th Street branch was moved to 38th Street and Eighth Avenue? A. Yes.

Q. And when you became president, was there just one president of both banks? A. That is right.

Q. And you were that president? (1004) A. That is right.

Q. And can you tell us, please, for how long you continued as president? A. I think it was six or seven years.

Q. Can you tell us for how long you continued with the bank? A. I think it was March, 1954.

Q. Now, at that time had you moved up from president to another post? A. Chairman of the Finance Committee.

Q. Then you say you resigned in about March, 1954? A. That is right.

Q. Can you tell us, please, whether or not that was as the result of the occurrences which became the subject matter of the investigation, the matters pending in this court? A. It was.

Q. And you resigned of your own free will at that time? A. Yes, sir.

Q. Now, also, will you tell us whether, outside of the matters that I referred to as those which came into being in this court, whether you were ever convicted (1005) in your life? A. No, sir.

Q. Were you ever arrested in your life? A. No, sir.

Mr. Rosenblum: Now, your Honor, do you want to take a recess? I am going into something else.

The Court: All right. We will take our mid-afternoon recess now. Don't discuss the case.

(Short recess.)

(Jury in box.)

JAMES W. MILLER resumed.

Direct examination (continued) by Mr. Rosenblum:

Q. Going back further a while, Mr. Miller, will you tell us whether or not during the period of time you covered you were connected with the Ninth Federal Savings and Loan Association? A. Yes, I was a director and officer there at the same time I was in the Pennsylvania Exchange Bank for a period of about ten years.

Q. Will you tell us what your duties were in connection with the Ninth Federal Savings and Loan Association? A. I had charge of all their investments other than mortgages.

(1006) Q. And can you give us the years that you were with that institution? A. About 1936 or '37 to '46 or '47.

Q. And were you receiving compensation for that work? A. Yes.

Q. Now, can you tell us whether or not you were also connected with the Metropolitan Mutual Auto Insurance Company? A. Yes.

Q. Will you tell us, if you can, the years that you were associated with that company? A. About '37 or '38 to about '41, I would say. It was three years.

Q. And will you tell us what your duties were? A. I

also had charge of all of their investments. They had no mortgages.

Q. When you say you had charge of investments for the two companies, just what do you mean by that? What did you do? A. Whenever they had money to invest, I selected the securities that that money would be invested in and picked the time when those securities should be sold or substituted for other securities.

(1007) Q. And the first was a savings institution? A. Oh, yes, Federal Savings and Loan Association.

Q. Coming back, Mr. Miller, to the Pennsylvania Exchange Bank, I will ask you now were some of those duties that you have described overlapping, that is, while you were with the Pennsylvania Exchange Bank did you discharge the duties for the Savings and Loan Company and for the Casualty Company, too? A. At the same time, yes.

Q. They were overlapping? A. Yes.

Q. Is that Casualty Company known by the same name today? A. No. It was merged. That is when I left the outfit, when it was merged into the Manhattan Mutual Insurance Company.

Q. Now, coming back to the Pennsylvania Exchange Bank, I ask you whether there was a time when you met a person by the name of Irving Mishel? A. Yes.

Q. Will you tell us, please, about when you met him? A. Well, I can tell you this not from memory. I have looked at the records recently. I met him in (1008) October of 1947.

Q. Are there other institutions with which you were connected other than the two I brought to your attention? A. Well, not any institution——

Q. Did you serve on any boards as a director? A. Yes.

Q. Will you tell us, please. I want to cover that subject completely before I go into the other. A. I was a director of the 23d Street Association, which is a civic association, for a period of twenty five years.

I was an arbitrator for the American Arbitration Association for a period of twenty-five years. I was, and still am, a member of the New York Committee of the Small Business Administration of the Government.

Q. Is that an appointment by the Government? A. Yes.

Q. And you still hold that position? A. Yes.

Q. Any other? A. Well, I was on one of the committees for the Charity Organization Society, Hudson Guild, Chelsea Association.

(1009) Q. There are a number of those of that kind? A. Yes. I can't remember them.

Q. I do not want the details of them. Go back for the moment to the time you say you met Irving Mishel. Please tell us when and how you came to meet him. A. That was October, 1947. Well, one of my duties, of course, was to promote the business of the bank and get as many new customers as I could.

Q. Will you tell us whether the duties of all the officers was to try to get as much business as you could? A. That's right; particularly mine.

Q. You mean under your heading as president you devoted a substantial amount of your time to that? A. Yes.

Q. Now, will you tell us, then, how you came to meet him? A. Well, I was after my present customers to get me new customers, and Mr. Luria brought Mr. Mishel into the bank and introduced him as a prospective customer.

Q. Now, tell us, please, what do you know about Mr. Luria? A. He was a depositor in the bank.

(1010) Q. A customer of the bank? A. Yes.

Q. Can you tell us for how long a time he had been a customer of the bank when you say you met Mr. Mishel through him? A. I can't tell you exactly. I would say a couple of years. He is still a customer there.

Q. He still is a depositor at the bank? A. Yes.

Q. Where was it that you met Mr. Mishel? A. It was in the bank.

Q. And was Mr. Luria there at the time? A. Oh, yes. He brought him in and introduced him.

Q. Tell us what happened at that time. You tell us instead of my asking you. A. I can't remember every little detail. He brought him in and said he was a prospective depositor, and I asked Mr. Mishel what line of business he was in. He said he had a liquor store, package store, in the Bronx, and he said he would open the account providing that he could be assured of some credit. We made a number of loans to package stores, and I told him I thought we could if he filed a statement.

(1011) Q. Had you particularly engaged in trying to get liquor stores as customers? A. Yes, we made a particular appeal to that. As a matter of fact, we had quite an elaborate program that we pursued in trying to get that kind of business.

Q. Can you tell us whether that was a more desirable type of business? A. Well, it was very good business, yes.

Q. You know that liquor stores is a cash business? A. Yes, and a licensed business, controlled by the State. Our experience with them over a period of years was very, very good.

Q. Do you know whether then or shortly thereafter Mishel opened an account with the bank? A. Yes, I would say within a week or so.

Mr. Rosenblum: May I have the signature cards of Mr. Mishel?

(Mr. Hallinan hands documents to Mr. Rosenblum.)

Mr. Rosenblum: What I am trying to get, your Honor, is the first card.

The Court: What exhibit number is it?

Mr. Rosenblum: I don't know.

(Mr. Hallinan hands documents to Mr. Rosenblum.)

Mr. Rosenblum: Will you mark these, please. (1012) separately?

(Defendant's Exhibits G, H, I and J for identification marked.)

Mr. Rosenblum: Mark these, please.

(Defendant's Exhibits K, L and M for identification marked.)

Mr. Rosenblum: Mark this also.

(Defendant's Exhibits N and O for identification marked.)

Q. Mr. Miller, before I show you any of these bank records, can you fix the approximate date when the first account was opened, the one you described before? A. Well, I can only fix it because I saw these records recently. I mean I haven't any independent recollection of it.

Q. Can you give us an approximate date? A. It was in the latter part of 1947.

Q. I will show you these exhibits without any particular order, J for identification, I am showing, K for identification, L for identification, M for identification, N for identification, O for identification, G for identification, H for identification, I for identification; and also 43, 44, 10 and 11, the last four being in evidence, and ask you to tell us whether among these, (1013) if it is there, you can give us the first opening sheet or opening card, the signature card, either one or both? A. (After examining documents) The first one isn't here.

Q. Well, can you tell us, if these will assist you in giving us the information, if you can recall what appeared on the first card, and when I say, "Card" I am referring to a signature card? If you can recall, tell us what did

appear on the first card that was used at the time the account was opened. A. It would be the title of the account, the signature of the person authorized to sign, the address of the firm, telephone number, initials of the person who opened the account, initials of the person who opened the account and would get credit for it.

(1014) Q. Can you tell us whether one— A. (Continuing) The type of business.

Q. Go ahead. A. That is about all.

Q. Can you tell us whether one of the cards which is marked for identification or in evidence that I have just shown you is of the type which was used at the time Irving Mishel opened the first account? A. Well, it should have been one of these salmon-colored cards. We had different colored cards to differentiate different types of accounts.

Q. You hold in your hand and you are directing to my attention a salmon-colored card marked M for identification, is that right? A. Yes.

Q. Now could you tell us whether or not this was the type of card which was used at that time? A. Yes, it should——

Q. And I bring to your attention that in the lefthand corner on the bottom it says "Form 17E5M10-46." A. Well, that is the date that the form went into effect.

Q. So that in all, would you say then that it (1015) is your best belief that one of these cards this type, identified as M for identification, was used at the time? A. Yes, it should have been.

Q. Now will you tell us, please, as to what the words "introduced by" and then giving the initials, meant to you and meant to the bank when it was put on one of these cards? A. The officer or director of the bank who would be credited with having brought in the business, originated the business.

Q. Were only the officers and the directors the ones who received credit? A. Yes.

Q. Will you tell us just what the words, and I am referring to the printed matter on the cards, "Account Opened By," means A. Well, that is the officer or clerk or secretary who did the physical work of accepting the initial deposit, either filling out this opening sheet or seeing that it was filled out.

Q. Do you recall the name of the liquor store that you referred to at the time the account was opened? A. I believe it was Berkshire Wine & Liquor.

(1016) Q. Company? A. Company, yes. I don't know whether the word "company" was on it, but it should have been. My memory is it was an unincorporated business.

Q. This card that I hold in my hand which is M for identification, is that a signature card? A. It is a signature card.

Q. Can you tell us what that contains, which is to be used in connection with the issuance of checks? A. It contains the signature which is authorized to be on the checks.

Q. Now in addition to the cards at the time the account for Mr. Mishel was opened in the manner you have described, the Berkshire Wine & Liquor, and you think the word "company" was on it, can you tell us whether there was also an opening sheet? A. There was an opening sheet similar to this (indicating).

Q. When you say "similar to this," and you picked up a paper— A. But it was a salmon-colored one.

Q. I see. The colors happen to be with the card in the opening sheet.

(1017) Q. When you said similar, you picked up 43 in evidence. A. Yes. But the wording would not be necessarily exactly the same.

Q. I see. Would it be substantially the same? A. Substantially the same.

Q. From the time that this account was opened, in the manner you described to us, can you tell us whether or not all other accounts which were opened by Mr. Mishel or the liquor companies were all credited to you? A. Yes, sir.

Q. Can you tell us whether or not if on an occasion Mr. Mishel opened another account which had nothing to do with the liquor company, would that be credited to you? A. Yes, sir.

Q. Can you tell us whether or not that means that you personally had to fill out the card?

Mr. Hallinan: I will object to this, your Honor. Three leading questions I did not object, but I will now. I think we are sufficiently far along so that I will request that leading questions (1018) be stopped.

The Court: All right. I will let this question stand. But don't lead any more.

Mr. Rosenblum: Will you read the question, please?

(Question read.)

A. No.

Q. Now can you tell us, within the course of the years from the time when you say you met Mr. Mishel and he said he would open or he then opened an account at the bank, until the present time, or until you left the bank, can you tell us how many other accounts connected, say, with his liquor business or from his wife or for himself were opened? A. Well, there were at least five other accounts in which he signed and had an interest in.

Q. And that required his signature either as an individual or an officer? A. Yes.

Q. Were they all at the 48th Street branch? A. Well,

those are the only ones I know about that were at 48th Street.

Q. Will you give us the names of those five additional? I think you mentioned the one Berkshire. (1019) Wine & Liquor Company. A. Mishel Wine & Liquor. Irving Mishel Special. Regal Amusement Company. Admiral Trading.

Q. Admiral Trading? A. Trading.

Q. Was that a company or a corporation, if you recall? A. I don't recall. And Helen Mishel.

Q. Have you recently at my request, or within the last year or so, checked records in order to bring back to your mind the details of accounts, names, and so on? A. Yes.

Q. Now tell us if you can what the relationship was, if any, between Berkshire Wine & Liquor Company and Mishel Wine & Liquor Company? A. I think one succeeded the other.

Q. Can you tell us what the Regal—give me that full name again, please. A. Regal Amusement Company I think.

Q. Can you tell us what that company was? A. They operated coin-vending machines, I believe.

(1020) Q. Will you tell us, please, if you can, what the relationship of Irving Mishel was with the Regal Amusement Company? A. I don't remember, except that it was an officer and signed on the account.

Q. He was a signer on the account, you said? A. I believe so, yes.

Q. Now how about Admiral? A. He was——

Q. Tell us what that company was? A. That was a finance company, bought notes from business houses.

Q. Now let us take for the moment Admiral, which you say was a finance company which bought notes from business houses. A. Yes.

Q. Will you tell us whether those notes were brought—whether or not those notes were brought to the Pennsyl-

vania Exchange Bank? A. Yes. Some were brought for collection, I believe, and some were brought for discount.

Q. During the years from the time that Mr. Mishel first met you and up to the time when you left the bank, and you told us the date when you resigned, will you (1021) tell us whether or not there was any credit, credit extended by the Pennsylvania Exchange Bank to one or more of the six accounts that you referred to a moment ago, the ones which you said Mr. Mishel was connected with and was a signer? A. Yes. Credit was extended to Berkshire Wine & Liquor Company, Mishel Wine & Liquor, Irving Mishel, Regal—Admiral Trading. I am not sure about Regal Amusement.

Q. In connection with the companies or corporations, the six you referred to, can you tell us whether or not Mishel was the only person who dealt with the bank in connection with loans which were obtained? A. Yes.

Q. Was there more than one type of loan extended to the companies and the individuals you referred to? A. There were three types of loans.

Q. Will you tell us, please, what those three types were? A. Well, one type was a direct loan where he borrowed on the note of the corporation, direct note. The second type was——

Q. Would that be a note of the corporation or a note of an individual connected with the corporation? (1022) A. No. The note of the corporation itself.

Q. Would that carry any guaranties? A. The guarantees of Irving Mishel and his wife, Helen Mishel.

Q. That is the first type. Now tell us what the second type of loan embraced. A. The second type was a straight collateral loan whereby he would—whoever the borrower was would deposit collateral, stocks or bonds.

Q. Were there any particular types of collateral required by the bank? Were they limited or unlimited? A. No. It had to have a market value. I mean, some place—it

had to be a stock or bond that we could somewhere get a quotation and see what the actual value of it was in the market.

Q. In other words, was it something that had to the officers a value that they thought the particular thing had? A. Yes. That could be verified by published quotations or quotations that could be obtained from brokers.

Q. What is the third type of loan that was made? A. It was the discount of customers' notes. That is, the notes that had been given by a third party (1023) to the corporation that was discounting them or had been purchased by that corporation. Of course in the finance company most of the notes would be notes that he had purchased from other holders.

Q. Would they be endorsed by either Mr. Mishel or another officer if it was a corporation that was doing the financing, or an individual if it was not a corporation? A. Yes. And also again guaranteed by him personally and by his wife.

Q. Will you tell us, please, just how loans were extended to Mishel for himself and for the companies you referred to, outside of the three types that you told us about? Was there an application made, or what? A. Well, it wasn't any formal written application. The borrower would simply come into the bank and discuss the matter with me and be first told that he would have to file a financial statement. After the financial statement was received I would give it, if he gave it directly to me, I would give it to the credit manager, who sat right behind me, and he would be informed that there was going to be an application——

Q. A little louder. (1024) A. He would be informed that an application for credit is being made.

Q. Will you tell us what his duties were in connection with the processing of a loan of that type? A. From that point on, he would take the financial statement and set

it up and analyze it, as we would call it; we would have a sheet where they are set up and they are analyzed to see whether the—how the current position was in relation to sales, and regular formulas that the credit department had to apply. Then he would check it through credit agencies, Dun & Bradstreet; there is another agency that he would check it through to see if there were any judgments against the—if it was a corporation, or the maker of the note or any of the individuals.

Q. He would check even those who guaranteed or endorsed the notes or—— A. Well, we only checked them once, yes, we checked them.

Q. Can you tell us whether under your system, credit information was received continuously as time went on? A. Yes. But I didn't quite finish, Mr. Rosenblum.

Q. Oh, please do. (1025) A. In addition to the checking that I just mentioned, he also would check with any other banks where the borrower or the prospective borrower had accounts or had previously had accounts. Then, on the credit agency, the account—if we made the loan—was put on what was called continuous service, so——

Q. Which meant what? A. Which meant that if the credit agency got any additional information during the year they were to advise us of it immediately. At the end of the year, if the account was still open and still borrowing, it was renewed. So we had a continuous report every time there was any change in the corporation or any change in the financial condition which had come to the attention of the credit agency.

Q. And that would be put in the file of the particular individual or company to which that pertained? A. The credit department, yes. They were filed as soon as—as soon as application was made a credit file was started in the credit department.

Q. Was that maintained in the credit department (1026) or in yours? A. Maintained in the credit department.

The credit department was upstairs on the balcony over the operating floor of the bank.

Q. Will you tell us, please, the method that was used by those in charge of the bank in granting or approving loans? Tell us who had that power, who had that right, and how was it exercised? A. Well, when the credit department had the file worked up on, let us say the first application, the credit manager would bring the file to my desk, and he would tell me what his opinion was, whether he had found anything that looked detrimental, any judgments, or if the checking showed that they were slow paying, they had been sued. They had a number of little things that you tick if they are detrimental. And if it is what we call clear then we would discuss the possibility whether he was entitled to the credit he had asked for.

Q. When you say "we discussed," who is the "we" that discussed? A. The credit manager.

Q. Who else? A. Well, that is all, up to the point——

(1027) Q. You said that. I did not know whether it included you. A. Yes.

Q. Any others? A. Myself.

Q. He first got the information, then he sat down and discussed the particular application and such information as he had lined up with you? A. That is right. He had a number of assistants who accumulated this information and put it in the file, and then he worked it over, and then he brought it to me and we discussed it, and if it looked like it was worth proceeding further on, according to the limits of the loan, if it was over my limit, then he made up a different form——

Q. Explain to us, please, when you talk about the limits of the loan, just what does that mean? You said "my limit," and then you said their limits. A. Well, I had definite limits on which I could make a loan.

Q. Did you have the right to make a loan up to a cer-

tain amount without approval of any other person? A. Yes.

Q. Or committee? (1028) A. Yes.

Q. Will you tell us what that amount was? A. On a direct loan it was $5000. On customers' notes it was $20,000. On collateral, some other figure I don't remember. A little higher, maybe.

Q. A little higher than the twenty? A. Yes.

Q. Will you tell us, then, where there was, say, a direct loan applied for beyond the 5000, which was your limit, who had to approve that? A. The executive committee.

Q. Will you tell us, please, who was on the executive committee? A. There were five directors and the chairman of the board, and the president, myself, were members ex officio.

Q. Did the chairman of the board and yourself as president have the right to vote? A. No, no vote.

Q. When a loan was approved by the executive committee, can you tell us whether or not it had to be unanimous? A. It had to be unanimous.

(1029) Q. Can you tell us the top limits of loans which Mr. Mishel and/or his companies and corporations received from the Pennsylvania Exchange Bank? A. Well, the high point at any time for all the accounts I believe was thirty some-odd thousand dollars.

Q. Can you tell us whether or not at the time he became a depositor or customer of the bank and he applied for loans, whether he filed a financial statement? A. He did.

Q. Can you tell us whether or not, as time went by, the bank required, and whether or not he filed, new statements as time went on and new periods were reached? A. Yes, he filed statements from time to time.

Q. Did that apply to his companies and corporations and did it apply to the individuals you referred to? A. Yes.

Q. Were those all incorporated within the credit file of the bank? A. They were.

Q. Now you said something about where some other (1030) officer was situated, and this might be a time that I can ask you to do this. Would you turn around, please.

Mr. Rosenblum: May I, your Honor?

The Court. Yes.

Q. Unless you want to come down here. (Witness stood at the diagram.)

Q. Will you tell us, please, looking at that diagram, tell us about where your desk was, and we are talking now about the period from 1946 or '7 to the time when you left the bank, and if there were any changes during that time please indicate and tell us when there would be any changes in position? A. Until the time I left the bank, my desk was right here (indicating).

Q. And that is where it says "Miller - B"? A. Yes.

Q. In other words, "Office space," right, over the words "office space"? A. That is right. Right in front of my desk—this is all out of scale, I mean where this has been drawn in.

Q. Would you tell us—you do it yourself now; will you indicate, giving the time and the place that (1031) was occupied by you and your desk, just ignoring for the moment what else maybe on there, if you agree with what is on there please so indicate, and if you don't, please make some other mark which would show where you say you were? A. My secretary was about there (indicating); my desk was about here (indicating).

The Court: You had better put something on there, some initial.

Q. Would you put your own secretary, put underneath that your initials J.W.M.? A. My desk was right behind here (indicating).

(1032) Q. Will you indicate where and show us about how far her desk was from your desk? A. I don't know exactly how to put it in by scale.

Q. Can you tell us, first, before you put it in, about how far was her desk from yours, giving us the number of feet? A. It couldn't have been more than about four. She sat at her desk and answered my phone and she would make out a memo of whoever was on the phone and she could turn right around and hand it over to my desk to me. So that is how close it was.

Q. Could she hand you the memo you referred to without leaving her seat? A. Yes. She just turned around in her swivel chair and handed it to me.

Q. So that your desk was further up, looking toward the top of the diagram, from the place where you marked "Secretary" and the initials "J.W.M." or "J.M."; is that right? A. Well, I didn't quite follow what you——

Q. I wanted to know first——

The Court: He marked a square near "office space" (1033) where he thinks his desk was.

Q. Put your initials under the square "Office space." A. (Witness writes.)

Q. You are not applying the scale that appears at the top? A. No.

Q. You have already told us how far her desk was from yours; is that right? A. Yes. She could swing around and hand me a memo.

Q. Will you tell us just about the space occupied, where it has been referred to, by the officers' platform? A. This space from here to here (indicating).

Q. When you say "this space" you are referring to all on the left-hand side of the place marked "railing 3 foot 7 inches high"; is that right? A. That's right.

Q. What is that? A. That is where the credit manager sat.

Q. Put the words "credit manager", please. A. (Witness writes.)

Q. Will you tell us where the other officers were that dealt with you in connection with loans? (1034) A. Well, these officers in the front here from this point up had nothing to do with loans.

Q. When you say, "From this point up," you are putting your hand from the place below where you marked the word "secretary"? A. That's right.

Q. Going down to the front part of the bank? A. That's right.

Q. What was the next closest desk to yours? Was the credit manager the next one to yours? A. Behind me, yes.

Q. Nothing between you and the credit manager? A. No.

Q. And going in the other direction was your secretary's desk? A. Right.

Q. Were signature cards available to people who asked for them? A. Yes.

Q. Were they only in your possession or in the possession of others, too, for distribution? A. Oh, I believe every desk on the platform, every officer, manager, chief clerk and secretary had a drawer where they kept for current working a few forms (1035) of every kind that were generally used in connection with opening accounts.

Q. And can you tell us whether or not there was any requirement that when a signature card, say, was returned to the bank or brought to the bank by a customer that the person who was opening a new account had to be present? A. No.

Q. What would happen, then, to a signature card which was brought in by a customer or a person who was going to become a customer or depositor of the bank? A. You mean when the signed signature card came in?

Q. For instance, could Mishel bring in signature cards without having the person appear with him who was opening an account? A. Yes.

Q. Can you tell us whether that occurred or not? A. Well, I don't remember it occurring personally with me, no.

Q. Can you tell us whether or not in cases where a new depositor was brought in by the method you just described, whether the person who in the first instance had brought in the depositor, whether such officer then thereafter received credit? A. Yes.

(1036). Q. Can you tell us whether or not you ever heard that Mishel was in the check cashing business? A. Not until he said it when he was sitting right here the other day.

Q. Did he ever submit any document in which he represented that he or a company or a corporation with which he was connected was in the check cashing business? A. He did not.

Q. Can you tell us whether or not there was a relationship between the amounts that a customer had to maintain on an average balance for a particular period as against the amount that a customer borrowed from the bank? A. In order for a customer to maintain his credit standing in the bank, he had to keep balances of at least 20 per cent of his borrowings.

Q. Can you tell us the amount of the average balances which Mr. Mishel maintained or his companies? A. Well, yes. I figured it up recently from the records of the bank. The first year he was in the bank the average balance for the year was $2700, for the second year his average balance was $7700 and the third year it was about $6200. That is within a hundred dollars.

Q. That would mean, then, that he could borrow (1037) when his average was $7700 five times $7700; that would be his top limit? A. Yes.

Q. And the same would be true of the other figures which you gave to us; right? A. Correct.

Q. Can you tell us whether or not the bank required that Mishel produce at such time as it desired or directed him to such documents which were the basis of the loan which the bank was making? For instance, if you say it was a loan on customers' notes, did it require that the customers' notes be submitted to the bank? A. Well, if he brought in a customer's note that was made to a corporation, he would have to have a resolution form filled out by the payee of that note. A note made to a corporation can't be negotiated just on the basis of somebody writing the name of the endorsement on the back. In addition to that, you have to have a form, a legal form, which gives someone authority to transfer that note to another party. So he had to have these resolution forms from time to time.

If he brought in a note and it was approved for discount, he would have to pick up a resolution form, take it out, have it executed, the seal of the corporation (1038) has to be affixed to it, it has to be signed by an officer of the corporation, attested to by the secretary, and we couldn't discount the note until such time as he had sent that resolution form back to the bank.

Q. Were there various types of agreements, like hypothecation agreements, that had to be submitted from time to time? A. There are all kinds of forms. I had a desk full of them to fit different occasions.

Q. That you had; you had the forms? A. Yes.

Q. Would those forms be available to Mr. Mishel in those instances where he had to supply them to the bank in connection with his loans? A. Yes.

Q. Did he have any personal loans? A. I don't recall this, but I learned from talking with other officers in the 38th Street office that he had a loan on a Cadillac automobile there. I didn't know anything about it at the time.

Q. You did not know that at the time, you say? A. No.

Q. You learned that later? A. Yes.

(1039) Q. Will you tell us whether or not personal loans were negotiated through the 38th Street office? A. Yes, they were at that time.

Q. That is on things like automobiles? A. At that time the Small Loan Department was at 38th Street.

Q. Mr. Mishel testified that a number of accounts were opened which he referred to as stiff accounts, and he also testified that in these accounts which were opened from $150,000 to $200,000 a month was deposited every month. Do you remember his testimony? A. Yes, I remember him saying that.

Q. Is that the fact? A. It is not a fact.

Q. Did you know that these accounts were so-called stiff accounts? A. I did not. As a matter of fact, I never heard the expression "stiff accounts" until a couple of months ago in this investigation.

Q. Do you recall that he testified there was a stiff account in the name of Williams? Yes, I remember his testimony.

Q. And one in the name of Sam Marco? A. Yes.

(1040) Q. One in the name of Newman? A. Yes.

Q One in the name of Young? A. Yes.

Q. One in the name of Case? A. Yes.

Q. And one in the name of Feinman? A. Yes.

Q. And then do you remember he gave some other names and he then later said he was not certain that they were in the Pennsylvania Exchange Bank; do you recall that? A. Yes.

Q. Those that I mentioned, those that he said were in the bank, can you tell us how much in all was deposited in those accounts? A. Well, I went——

Q. Give us the amount. Don't tell us what you did. A. $128,448.

Q. Did you, at my direction, get that information from the records? A. I did.

Q. Can you tell us whether that covers the period from July, 1948, to May, 1950? (1041) A. It does.

Q. And can you tell us whether or not in that twenty-two months or so that is the total of all the deposits in all those accounts? A. It was.

Q. Can you tell us about what the average would be for those accounts for those months? A. Well, if you divide it by 22, it is about $6,000 a month.

Q. Did you find any account that had $200,000 deposited in it in one month or $150,000 deposited in it in one month? A. $128,000 was the total for the two years.

Q. For all those accounts? A. For all those accounts.

Mr. Rosenblum: May we stop at this point?

The Court: We will recess now until 10.30, Monday. Don't discuss the case.

(Adjourned to Monday, October 29, 1956, at 10.30 o'clock a. m.)

(1042)

New York, October 29, 1956;
10.30 o'clock a.m.

Trial resumed.

(Jury in box.)

The Court: Good morning. I am sorry for the delay. I had to terminate another case, and the same thing will happen tomorrow morning. So if I forget to tell you, there is no reason to get in before 10.45, because I have to finish up the end of another case tomorrow morning, too.

All right, Mr. Rosenblum, I think we can go ahead.

Also for your planning, we have to end at 4 o'clock this afternoon, which I may forget later, but I hope not to. There is a judges' meeting.

JAMES W. MILLER resumed.

Direct examination resumed by Mr. Rosenblum:

Q. Mr. Miller, do you recall Mr. Mishel testifying that sometime in or about 1946, '47 or '48 he described what he said was a meeting that took (1043) place, at which time he was talking with Mr. Gallagher and you came into the room, and he testified that at that time Mr. Gallagher—I will give you the substance of it—said to you, "You may or you can do anything you wish to with Mr. Mishel. I know his people and you can undertake anything whether it be legal or illegal"?

Do you recall his testimony? A. I recall his testimony.

Q. Will you tell us, please, whether or not such a meeting and such an occurrence ever took place? A. No such meeting ever took place.

Q. Thereafter he testified concerning illegal acts which he claimed when he participated in in connection with occurrences at the bank.

Were you ever a partner of Mishel? A. No, sir.

Q. Were you ever a partner of Mishel and Gallagher? A. No, sir.

Q. He also testified at a later time that in fact even though he fixed this date of the meeting with Gallagher that I described before and you and Mishel, that at a time before that meeting there was (1044) an occasion when he had an illegal transaction with you.

Did that ever occur? A. No, sir.

Q. I think that is the one that he referred to as "burnt money."

Do you remember his testimony as to that? A. Yes, I remember his testimony.

Q. And I believe in substance he said that he had paid you 10 per cent for your part in assisting him in putting burnt money through the bank.

Did that ever occur? A. No.

(1045) Q. Did he bring burned money into the bank? A. Well, not to my knowledge; but I heard from one of the fellows at the bank the other day——

Q. Who was that A. Mr. Brennan.

Q. Mr. Brennan? A. Yes. That there had been an occasion when he brought some burned money into the bank.

Q. What happened with the money? A. He couldn't fix the time. He took it to the teller and the teller took out money that was negotiable that could be sent down to one of our depositaries and gave him good money for it.

Q. Now do you recall, Mr. Miller, his testimony, and I don't want to go into it because I think it is quite clear at the moment, with reference to the so-called stiff accounts? A. Yes, I remember it.

Q. I think I asked you, but I will ask you again, did you ever have any talk with Mr. Mishel with reference to the opening of the stiff accounts? A. Never at any time.

Q. Do you recall that he testified that they included accounts in the name of Williams, Marco, (1046) Newman, Young, Case, Feinman, and then Katz and Whitman, and he later said that he wasn't certain that Katz and Whitman were at the Pennsylvania Exchange Bank? A. I recall the testimony.

Q. Can you tell us for how long a time the Williams account was opened at the bank? A. It was opened for one month, July 1948.

Q. And how much was deposited in that account during the entire month? A. $10,000.

Q. Can you tell us, please, in connection with the Newman account when it was opened and for how many months it was active? A. It was open for four months, from May to August 1949, and there was $1000 deposited in May and $200 in June, a total of $1200.

Q. Now in connection with the Marco account, will you tell us, please, give us the same information you gave us as to the others? A. That account was opened for ten months, from December 1948 until September 1949. The deposits by months were: December $200. January 1949 $420. February $360. March $10,505. April $500. (1047) May $1070. June $900. July $12,287. August $2542. September $1464. Total of $30,248. for the ten months.

Q. Take, please, the Case account. A. That account was opened for four months beginning with June 1949 and terminating in September 1949. June there was $22,000 deposited in the account. July 8000. August 15,000. September $500. A total of $45,500 for the four months.

Q. I asked you about the Newman account. A. Yes, you asked me about that. You didn't ask about the Young and the Feinman accounts.

Q. Young and Feinman. Give us the Young account. A. The Young account was opened in June 1949; it was active for four months. There is nothing in September of that year. Deposits for June were $21,000. July 6000. August 15,000. No deposits in September.

Q. You said four months. I think you mean three months it was active? A. It was active for three months.

Q. You said it was opened for four months? A. But there were no deposits in the last month.

(1048) Q. And the Feinman account? A. The Feinman account was opened in April 1950 and was opened for two months. $900 was deposited in the account in April. Nothing was deposited in May. Total of $900 went through the account.

Q. Was there any Katz account at the Pennsylvania Exchange Bank that you have been able to find? A. No. I asked and they had no record of any Katz account.

Q. How about Whitman? A. I asked them and they said they had no record of such an account.

Q. Can you tell us whether the grand total of deposits is $129,848? A. That is right.

Q. I think you said on Friday it was 128,000? A. I said 128,448.

Q. This is the correct figure that you gave us this morning? A. 129,848.

Q. Now in connection with these accounts that you have just testified about, tell me how many months in all were these accounts open, a total of how many (1049) months? A. They were open and in existence for a total of 25 months.

Q. How many months were they active? A. 21 months.

Q. According to Mr. Mishel, he said that you were the one who determined when an account should be closed and another one opened. Did you ever say anything like that? A. There was never any talk of that. It was all just fiction.

Q. He also said that you received—that in these accounts from 150 to 200,000 dollars a month was deposited in these stiff accounts as he described it. Is it correct that the active months total 21 months out of the 25? A. That is correct.

Q. Did you ever receive $150 a month in connection with these so-called stiff accounts? A. I did not.

Q. Did you receive a single penny from Mishel or from anyone else? A. No, nor from anyone else.

Q. Now let us get to the Chernoff matter, Mr. (1050) Miller. I think the testimony is that the first letter you received from the Treasury Department was on July 19, 1950. A. That is the first notice that we had in connection with the Chernoff matter.

Mr. Rosenblum: May the clerk meanwhile mark these documents separately, please?

The Court: Yes.

Q. I show you Government's Exhibit 20 for identification and ask you whether that is the first communication that you received from the Government in connection with the cashing of the Chernoff bonds? A. It is.

Q. And did that have with it some other papers? A. Yes.

Q. What were they, please? A. There were photographs of a number of the bonds, and I believe there was a schedule attached also.

Q. Would the schedule be these two documents which I have before you, 20-A and 20-B, each in evidence, Government's exhibits? A. Yes.

Q. Now, tell us what you did after you received (1051) that communication from the Government. A. This letter, according to the time stamp of the bank on it, was received on July 21.

Q. Is that what you were looking for on the back? A. Yes.

Q. July 21, 1950? A. 1950. When I received this, I turned it over to the head teller, Mr. Wilmot, and told him to check into it. He reported back I don't recall whether it was the same day or a few days later, but he reported back that he wasn't able to get any information from anybody in the bank or the records that would indicate how these were cashed.

Q. What did you do with the bonds, that is, the photostat or the photograph of the bonds? A. They were all attached together. I gave him everything that was received.

Q. Did he then return the letter together with the two schedules and the photostat or photograph——

Mr. Rosenblum: Mr. Hallinan, do you know were they photographs or photostats? Do you recall?

Mr. Hallinan: I have never seen them, Mr. Rosenblum.

(1052) Mr. Rosenblum: All right, either photographs or photostats.

Q. What did you do with those bonds which were enclosed, that is, the photograph or photostat of bonds which were enclosed and came with the letter of July 19, 1950? A. They were all kept together until a couple of years later, when we sent them to our bonding company.

Q. Will you tell us, please, what you did after receiving the letter and after receiving the report from Wilmot that you told us about; what is the next thing you did in connection with the Chernoff bonds? A. I didn't do anything because the letter put us on notice that Secret Service men would call at the bank.

Q. Did you communicate with your bonding company? A. Oh, yes, I sent a letter to the bonding company advising them of this letter from the Fiscal Service.

Q. Was that a company that had bonded the bank for some period of time prior to this? A. I don't recall how many years but it was Lloyds (1053) of London.

(Defendant's Exhibits P through Z marked for identification.)

(Defendant's Exhibits AA through AE marked for identification.)

Q. I show you Defendant's Exhibit AE for identification and ask you whether that is a letter you sent to the bonding company? A. No, this is the letter from the bonding company acknowledging my letter.

Q. You had sent a letter? A. I sent a letter.

Q. And this is the acknowledgement you received from the bonding company? A. This is a letter dated August 9, 1950, and says:

"We acknowledge herewith report of loss" and so forth.

Q. And is this the letter which you received from the bonding company? A. Well, this is from their agents here, Toplis & Harding, who are agents for Lloyds of London.

Q. Can you tell us, please, whether or not you thereafter received a letter from the Treasury Department, (1054) Fiscal Service, signed by Mr. Bartelt with reference to the Chernoff bonds, the letter being dated November 16, 1951, or would you rather I show it to you first? A. I know we received such a letter, yes.

Q. I hand you documents so far marked by the clerk and ask you to look through these papers and see if you can select for us the letter you just referred to? A. It doesn't seem to be in this group.

(Defendant's Exhibits AF through AL, inclusive, marked for identification.)

Q. Will you look through these others, please.

You say you know you received such a letter; is that right? A. Yes.

(Defendant's Exhibits AM through AT, inclusive, marked for identification.)

Q. Look through these meanwhile (handing to witness).

(Defendant's Exhibits AU and AV marked for identification.)

Q. I now hand you AU and AV for identification and direct your attention to AV for identification (1055) and ask you whether that is the letter you just referred to? A. This is the letter, yes, dated November 16, 1951.

Q. Was that in connection with the Chernoff bonds, the cashing of the Chernoff bonds? A. It was.

Q. Was the letter sent to you as president of the Pennsylvania Exchange Bank? A. It was.

Mr. Rosenblum: I offer this letter in evidence.

Mr. Hallinan: I am sure I will have no objection. I just want to check and make sure it is the right letter I had in mind.

No, no objection, your Honor.

The Court: Received.

(Defendant's Exhibit AV for identification received in evidence.)

(Defendant's Exhibits AW to BA marked for identification.)

Q. Mr. Miller, will you meanwhile look through those papers and see if you find a document marked for identification dated November 29, 1951. (1055a) A. I find a copy of a memo that I wrote to the bank's attorney.

Q. Just keep that out.

Mr. Rosenblum: May I read it to the jury, your Honor?

The Court: Yes.

(Mr. Rosenblum reads Defendant's Exhibit AV to the jury.)

(1056) Mr. Rosenblum: I am not reading the letter of July 19, 1950. I think it has been read to you. But I will check the record.

(Mr. Rosenblum continues reading Exhibit AV.)

Q. Now, do you see the first letter here——

Mr. Rosenblum: May I just direct—not read the letter, as I think it has been read before, but just direct the jury's attention to some portions of it.

(Mr. Rosenblum reads from Government's Exhibit 20.)

Q. Now, Mr. Miller, after receiving the letter which is AV in evidence from the Treasury Department which I just read to the jurors, before this last part that I read from the letter dated July 19, 1950, after receiving the letter of November 16, 1951, will you tell us whether or not you communicated with the attorneys for the bank? A. I believe I did, yes.

Q. Will you see whether or not from the files of the bank you have a memorandum covering your communication with the attorneys for the bank? A. On November 29, 1951, I sent a memorandum to Mr. Levy, who was the attorney for the bank.

Q. Can you give us the number of the exhibit (1057) for identification? Is that AU for identification? A. AU for identification.

Mr. Rosenblum: I offer AU for identification in evidence.

Mr. Hallinan: I will object to this on the ground that it is a self-serving declaration, your Honor, also on the grounds of relevancy.

Mr. Rosenblum: May I ask one question.

Q. Did this have to do with the cashing of the Chernoff bonds? A. It did.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Can you tell us whether or not on or about the time you communicated with the bonding company, that is, November 29, 1951? A. I believe I did.

Q. Now, I read to the jury the letter dated November 16, 1951, which is AV in evidence and I ask you whether or not you sent a copy of that letter to the bonding company? And I direct your attention to see whether or not you have a letter of November 29, 1951, among the papers marked for identification addressed to Toplis & Harding. (1058) A. November 29, 1951, a letter by me to Toplis & Harding, with a copy to our insurance broker and to our attorneys.

Q. What identification number is that? A. AR.

Mr. Rosenblum: I offer AR for identification in evidence.

Mr. Hallinan: I have no objection to this.

(Defendant's Exhibit AR for identification received in evidence.)

Mr. Rosenblum: May I read it to the jurors?

The Court: Yes.

Mr. Rosenblum: I am not following the practice of sending it around.

(Mr. Rosenblum read Defendant's Exhibit AR to the jurors.)

Q. Mr. Miller, what company is R. A. E. Herbhold and Company? A. They are the brokers who handled the insurance for the bank.

Q. And Toplis, Harding, Inc.? A. They are the adjustment agents for Lloyds of London who had the bankers blanket bond on the bank.

Q. I direct your attention first to one of the exhibits dated December 6, 1951, from Dorff & Levy. (1059) See if you can find that.

if you find that. A. I find a letter here from Dorff & Levy dated December 6, 1951.

Q. Will you tell us whether that concerned itself with the Chernoff matter? A. It does.

Q. Was that signed by I. A. Levy, a member of the firm? A. Yes.

Q. Was he the active member of the firm that represented the Pennsylvania Exchange Bank? A. He was.

Q. Was this addressed to you, to your attention addressed to the Pennsylvania Exchange Bank to your attention in re Chernoff? A. Correct.

Mr. Rosenblum: I offer AQ for identification in evidence.

Mr. Hallinan: I have no objection to this document going into evidence. (To Mr. Rosenblum) Would you just come up here a moment, please?

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: Defendant's Exhibit AQ I have no (1060) objection to this document going into evidence, but I do not waive the objection I made previously to Defendant's Exhibit AU which is referred to in this particular letter. And if Mr. Rosenblum has any thought in the back of his mind that this can then go in to complete this (indicating)——

Mr. Rosenblum: I was not thinking of that at all.

Mr. Hallinan: All right. I have no objection.

Mr. Rosenblum: I don't know what position I may take in the future and urge to your Honor, but at this time I don't have in mind to say——

Mr. Hallinan: I just want to make it absolutely clear for the record that I do not waive getting this into evidence by not objecting to this particu-

lar document. This (indicating) refers to this (indicating).

Mr. Rosenblum: If at a future time I renew my offer I will do it out of the presence of the jury.

The Court: It refers primarily to a telephone conversation anyhow.

Mr. Hallinan: Yes.

The Court: All right. We will receive it.

(The following took place in the hearing of the jury.)

Mr. Rosenblum: Will you mark this, please?

(1061) (Defendant's Exhibit AQ for identification received in evidence.)

Mr. Rosenblum: May I read it to the jury?

(Mr. Rosenblum reads Defendant's Exhibit AQ to the jury.)

The Court: We will take our mid morning recess now, and during the recess will you get your papers in shape so we can go ahead without delay.

Don't discuss the case.

(Recess)

(Jury in box.)

The Court: All right, Mr. Rosenblum.

By Mr. Rosenblum:

Q. Mr. Miller, there are in evidence now the documents which have dates July 19, 1950, and then the next one is November 16, and then another one November 29 and one of December 6.

Will you go back with me, please, for a few minutes and tell us whether or not after the letter of July 19, 1950, was received in which there is a reference to a fact that a secret service agent will come to the bank to make an in-

vestigation, will you tell us whether an agent did come to the bank? A. Yes, sometime in August. I can't fix the date, but Mr. Sershin fixed the date, I think, as August 8, 1950.

(1062) Q. 9th, I think he said. A. 9th?

Q. My recollection is, and I think I will be corrected, he said he was there on the 3d first. Did he see you on the 3d? A. He didn't see me, no.

Q. I believe the next time—A. He came in one time in August and saw me.

Q. I think his testimony is he came in on October 3, 1950, and then on August 6, 1950.

The Court: October or August?

Mr. Hallinan: The first time was August 9. The first time he saw Mr. Miller was August 9.

Q. His testimony is that he came in to see you or came to the bank and saw you on August 9, 1950. Do you recall whether that is the date, or approximately—A. I don't recall the date but I know he came sometime in August.

Q. Was that about that time? A. I would say yes.

Q. Will you tell us, please, just what occurred when Mr. Sershin came to the bank and saw you? A. Well, his conversation with me and contact with me at that time was very slight and very brief. (1063) I can't remember any words that he said, but I told him——

Q. Well, can you give us the substance of what he said? A. He said he was there checking on the Chernoff transaction. And I told him that Mr. Brennan, who was the manager, would make available all of the records and all of the facilities and the assistance of everybody in the bank. That was about the extent of his conversation with me. It only lasted as I recall a period of a few minutes.

Q. After that visit by Mr. Sershen on August 9th, 1950, will you tell us whether or not you saw Sershen again

after that time? A. I saw him once more and that was the last time that I had—I ever saw him until I saw him here in the witness box.

Q. In other words, would you say that you saw him on two occasions? A. Two occasions, yes.

Q. Can you fix the date or the approximate date when you saw him for the second time? A. I can't fix the date exactly.

Q. Can you fix the approximate date? (1064) A. Sometime before the middle of October, yes.

Q. Will you tell us what happened, what occurred at that time when you saw him on the second occasion? A. He came to my desk, and he had a picture, a small picture, of Mr. Mishel and he asked me if I knew Mr. Mishel.

Q. When you say small, you sort of indicated with your fingers. A. It was about the size of a passport picture. And he asked me if I knew Mr. Mishel. I told him yes, that he had been a customer in the bank that had gone bad.

He said, "Did Mr. Mishel ever cash any E Bonds in the bank?"

I said, "Yes, I believe he did, on a couple of occasions."

He said, "Do you know whether he had anything to do with these Chernoff bonds?"

And I told him that I had never connected him up with the Chernoff bonds.

And he said, "Well, we know he did." He says, "Is there any way you think we can tie him up?"

(1065) So we went through my day book and matched up a date of one of these cashings with a notation in my day book which indicated that Mr. Mishel had been there on one of those dates. I said I don't remember exactly what the name of the bond was. But he said, "Well, we know it is"——

Q. Keep your voice up. A. "He is mixed up in this thing, and this is the same date."

He says, "It must have been him."

So he said, "Can you remember what happened at that time?"

I said, "Well, I will tell you as much as I can remember; that Mishel brought a man into the bank to my desk and told me that this man was—as a matter of fact, he had bonds. He said that this man wanted to cash these bonds and that he was either m nager or someone that worked over in Roth's Restaurant and had been there for some years," he said.

I asked the man, "Is this you? Are these your bonds?"

He said, "Yes."

I called—I signalled for the guard, got the guard over, took the bonds over and cashed them.

(1066) Sershen said, "That fits, we have got Mishel. He admitted that this is his job and that he brought a stooge into the bank and passed him over as the owner."

So I said to him, I said, "Well, where does that put the bank?"

He said, "The bank is in the clear; you got identification from a customer."

He says, "That is what the regulations provide."

So I said, "Do you think we will be stuck?"

He said, "No, there won't be any claim made." He said——

Q. I can't hear you. A little more slowly, and keep your voice up. A. He said, "How about any other time that he was in with bonds?"

I said, "Well, there was another time," I said, "but I don't recall whether on that occasion they were his own bonds, his family's bonds, somebody else's bonds."

He said, "Well, did he have the other man with him?"

I said, "I don't remember the other man being (1067) with him on any other occasion."

He said, "Well, we can't find this other man that he brought in." He said, "Do you think that you could help us remember what he looked like?"

So I gave him a description. And he said, "Well, I don't think that would be very helpful." He said, "We will get in touch with you if we want a statement or need any other information from you."

Q. Would you keep your voice up? A. Sorry.

Q. Go ahead. A. He left.

Q. He said what at the end? A. He said he would be in touch with us if he needed anything further from us.

Q. Was that the first time that you learned that Mr. Mishel had been arrested? A. Yes.

Q. You say it was some day prior to the middle of October 1950? A. Yes.

Q. Do you recall whether Mr. Sershen was accompanied by another man? (1068) A. Well, if he was, he didn't say anything, and he didn't take part in any conversation. I saw the man that was here; I don't recall him.

Q. The man who was here is a man by the name of Sweeney? A. Yes. I don't recall.

Q. You can't say either way as to whether he was or wasn't there? A. He could have been, but I certainly don't remember him talking about the thing at all.

Q. So that we may get our sequence, Mr. Miller, was it thereafter that the letter which I read to the jurors, which is AV in evidence, dated November 16, 1951, that you received from the Treasury Department? A. Yes. We heard nothing for a year until this letter was received.

Q. For a year? Oh, that you say was October 1950? A. 1950.

Q. And the next letter you said you received was November 16, 1951? A. Correct.

Q. You say during that year you heard nothing whatever from anyone?

(1069) Mr. Hallinan: That is what he said, Mr. Rosenblum. I will object to the——

The Court: I don't think you need repeat it.
Mr. Rosenblum: All right.

Q. Thereafter did you write the other letters which are in evidence now, the ones which are marked AR and AQ, that is— A. After November 16, 1951, yes.

Q. Now, Mr. Mishel testified that in October 1950, after he was arrested, and I hesitate to suggest the date, but he said it was in October 1950, and the record will show the date, that he communicated with you and then met you at what he thought was the Holland House, at which time he claimed he had a conversation to the effect that he informed you that he had been arrested and that you in substance said to him, "You hold up your end, and I will hold up my end. Don't worry about it." Do you recall his testimony in that regard? A. I recall his testimony, yes; but nothing like that ever happened. I never saw Mr. Mishel anytime in my life outside of the bank, at no time.

Q. Can you possibly— (1070) A. I saw—wait a minute. I saw him in June or July of 1950 for the last time as far as he was transacting any business in the bank; the next time I saw him was in May of 1951, when he was brought into the bank in handcuffs I believe by sheriffs or marshals or somebody looking for this non-existent safe deposit box.

Mr. Hallinan: I move to strike this, your Honor, on the ground it is irrelevant.

The Court: I will strike it.

Mr. Rosenblum: I think it should stand. I take exception to your striking this last bit of testimony.

The Court: I will strike the part of his testimony dealing with when he next saw Mishel after July 1950.

Mr. Rosenblum: Exception.

Q. Do you recall whether or not Mr. Mishel ever had a box in the bank under the name of Robert Benson?

Mr. Hallinan: I will object to this, your Honor.
The Court: Sustained.
Mr. Rosenblum: Exception.

(1071) Q. Mr. Mishel has testified that you and Gallagher and he were partners and had moneys and other things in a safe deposit box at the Pennsylvania Exchange Bank. Is that true? A. That is absolutely untr

Q. Did you start with the Pennsylvania Exchange Bank from its inception, from the time it opened? A. No, the bank was opened in 1920 and I went there in 1930.

Q. And from 1930 up to the time when you resigned in 1954, were you continuously with the bank, that is, the Pennsylvania Exchange Bank, at the 48th Street branch? A. Well, no. Part of the time I was at 26th Street.

Q. When did you go to the 48th Street branch? A. 1946.

Q. When was the bank opened at 48th Street? A. 1946.

Q. So you were with the bank at 48th Street during the entire time from the moment it opened? A. Oh, yes.

Q. When I said "inception" I did not mean inception of the bank itself but the time this particular (1072) branch was opened. A. Yes.

Q. Was there ever a safe deposit box removed from that bank at any time while you were with the bank from 1946 up to the time when you left in 1954?

Mr. Hallinan: I will object to this and ask the Court to instruct Mr. Rosenblum not to ask any other questions along this line. There have been five put after your Honor's ruling on this matter.

The Court: I will sustain the objection, and I will tell Mr. Rosenblum we are not going off into the question he is inquiring about.

Mr. Rosenblum: Exception.

Q. Now, Mr. Miller, the last letter in evidence is dated December 6, 1951, from Dorff & Levy to the Pennsylvania Exchange Bank.

I ask you whether or not after that date you wrote a letter to Mr. Bartelt in connection with the Chernoff transaction? A. I didn't quite follow the date, Mr. Rosenblum.

Q. After the date of the last letter which is December 6, 1951—I direct your attention to 22 in evidence—(1073) A. Yes, I wrote a letter——

Q. —and which I believe has been referred to as the basis of the first count in this indictment, and I ask you whether or not you sent that letter? A. Yes, I sent this letter dated December 26, 1951.

Q. And specifically, was this after the date when you say Sershen told you the bank was in the clear? A. It was over a year later.

Mr. Rosenblum: May I, your Honor, at this time, although this letter has been read, read it again? It is the basis of the first count.

The Court: All right.

(Mr. Rosenblum read Government's Exhibit 22 to the jury.)

Q. Thereafter, did you receive, that is, did the bank or you, as president of the bank, receive a letter from the Treasury Department dated December 27, 1951? A. Yes, we did.

Q. Your letter was dated December 26, 1951, and addressed to the Fiscal Service in Washington, and the

other letter I have just referred to, did (1074) that come from Chicago? A. It came from Chicago.

Q. That is dated the 27th of December 1951, one day after your letter was dated that you sent out.

Mr. Rosenblum: I offer this letter which is AP for identification in evidence.

Mr. Hallinan: I will object. I think it is irrelevant, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. May I give your Honor the reason on the record?

The Court: Sure.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Rosenblum: The purpose in offering this letter is to show that there was a continuous set of steps taken by both parties, that is, the Treasury Department and the Pennsylvania Exchange Bank, wherein they were contending with each other as to whether or not they should or should not pay this money. So that, as you might say in a matter of litigation at times, it appears the steps taken were to establish whether or not these letters, being written in furtherance of, on the one hand, a claim by the (1075) bank that it is not liable for the cashing because it was not negligent, and secondly, the Government's assertion that it was.

Mr. Hallinan: I will agree to everything he says except the inference. It is a non sequitur. I will agree there was correspondence back and forth, but it has nothing to do with this particular item coming from the Treasury Department. It has nothing to do.

Mr. Rosenblum: It would be for the jury to decide.

The Court: I do not think this will help the jury in the least bit, and I will sustain the objection.

Mr. Rosenblum: Exception.

(Proceedings were resumed within the hearing of the jury as follows.)

By Mr. Rosenblum:

Q. Mr. Miller, can you tell us whether you thereafter received a further communication from the Treasury Department in Washington? A. Yes, we received another letter.

Q. Will you tell us whether that was in February 1952? A. February 5, 1952.

(1076) Q. Do you have that among the papers marked for identification? A. Yes.

Mr. Rosenblum: I offer AL for identification in evidence.

Mr. Hallinan: I have no objection to this, Mr. Rosenblum.

(Defendant's Exhibit AL for identification received in evidence.)

Mr. Rosenblum: May I read it to the jury?

The Court: Yes.

(Mr. Rosenblum reads Defendant's Exhibit AL to the jury.)

Q. Now tell us, Mr. Miller, did you then communicate with the Government or, did the Government thereafter communicate with you? A. Well, we got another letter

from the Government that followed very closely on to that one.

Q. This letter came from Washington? A. We got another one from Chicago.

Q. And will you give me that one, please, if you have it in the group of papers marked for identification? A. It is dated March 11, 1952 (handing to Mr. Rosenblum).

(1077) Mr. Rosenblum: That is AK for identification. I offer AK for identification in evidence.

Mr. Hallinan: No objection, your Honor.

(Defendant's Exhibit AK for identification received in evidence.)

Mr. Rosenblum: May I read it to the jury?

The Court: Yes.

(Mr. Rosenblum reads Defendant's Exhibit AK to the jury.)

Q. Now, thereafter will you tell us whether you made some communication after receiving that letter, that is, you on behalf of the bank? A. Well, I sent the two letters that we have just read to our attorneys, the attorneys for the bank.

Q. And those are the two letters that are AK and AL in evidence? A. Those are the two letters.

Q. And to whose attention did you send them? A. To Mr. Levy.

Q. And did you send your letter covering it with it? A. Yes, I had a covering letter, two pages (1078) (handing to Mr. Rosenblum).

Mr. Rosenblum: I offer AM, which is the first page, and AN, which is the second page, each marked for identification, in evidence.

Mr. Hallinan: I will object to this on the grounds of relevancy, and it is a self-serving declaration, your Honor.

The Court: I think I will sustain the objection.

Mr. Rosenblum: May I state upon the record my basis for the offer?

The Court: All right.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Rosenblum: Your Honor undoubtedly knows there is a third count in this indictment which is predicated upon a letter written by Mr. Levy which the Government claims was written by him at the direction of Mr. Miller as president of the Pennsylvania Exchange Bank.

It concerns itself with the same subject matter which is within the letter which I have just offered in evidence, the Chernoff bonds, and my purpose in this entire offer is to show the steps (1079) taken and particularly in this instance, since Mr. Levy later wrote a letter which the Government claims is false and for which it claims the defendant is responsible, I want to show what was made available to Mr. Miller at all times, all the facts, so that it will be given such consideration by the jury as it may deserve in determining whether he is liable under the third count; and of course it is offered for the other counts, too.

I particularly bring to your attention that there is a third count upon which this is predicated.

Mr. Hallinan: I think this document contains other statements which are self-serving, and the fact, if he wants to establish it step by step, it is the fact he is interested in. This can be established

by saying: "Did you write a letter?", which is alrea'y in the record.

The other material—most of the material in this letter, as a matter of fact, is purely self-serving.

The Court: You just want the last paragraph?

Mr. Rosenbium: No, I want the entire letter. May I look at it?

(1080) The Court: Yes.

(Mr. Rosenblum examines document.)

Mr. Rosenblum: I want the entire letter. Frankly, I think it is all part of the one picture and it is certainly material as to the third count. If you were saying that Levy was in cahoots, he ought to be a defendant with this defendant. If you say he was just doing these things at the direction——

The Court: Do you want anything left out more than the second sentence of the first paragraph, Mr. Hallinan?

Mr. Hallinan: I think the third sentence is a self-serving declaration, too. They have been proving that in another way.

(Discussion off the record.)

The Court: If you wanted the first sentence——

Mr. Rosenblum: You mean the first paragraph?

The Court: No. The second sentence in the first paragraph is out under any circumstances. If you want the last two paragraphs plus the first sentence, why, all right, but just to show continuity. Actually I do not think you need it.

Mr. Rosenblum: You mean the first sentence, we will skip that and then all that is out (indicating)?

(1081) The Court: Yes.

Mr. Rosenblum: And then from here on (indicating)?

The Court: Yes. The self-serving portion of it is out.

Mr. Rosenblum: I will state on the record that I want it all and I will take an exception to your not giving me all, but I will read to the jury the part which you permit me to read.

The Court: All right.

Mr. Hallinan: I have a problem where an exhibit was handled in this manner and then the exhibit was sent in inadvertently to the jury.

The Court: You can have a photostat made with the portion deleted and then substitute that for the original.

Mr. Hallinan: I will have it typewritten so it will be easier.

Mr. Rosenblum: Indicating you are skipping something?

Mr. Hallinan: Yes.

(1082) (The following proceedings took place in the hearing of the jury.)

Mr. Hallinan: I think I had better not mark that.

The Court: It is perfectly clear what I have received in evidence and you can read that portion now.

Mr. Rosenblum: I am just going to read that portion that your Honor indicated I could read.

The Court: This letter is not going before you in full. The first sentence and paragraphs 3 and 4.

(Mr. Rosenblum read portions of Defendant's Exhibits AM and AN.)

By Mr. Rosenblum:

Q. Do you also have a letter dated April 4, 1952 in among the papers which I gave you, addressed by you to the Treasury Department? A. I do.

Mr. Rosenblum: If your Honor please, this is a letter in evidence and it is the basis of the second count. May I be permitted to read it?

The Court: Do you want to read it again?

Mr. Rosenblum: Yes, so that I can have my (1083) continuity.

The Court: What is the exhibit number?

Mr. Rosenblum: It is Exhibit 23 in evidence.

The Court: All right.

(Mr. Rosenblum reads Government's Exhibit 23 to the jury.)

Q. Did you thereafter, Mr. Miller, send a further communication to Toplis & Harding, the bonding people? A. On April 4, 1952, I wrote to them enclosing a copy of the letter you just read.

Q. Will you give me that letter, please? A. (Witness hands.)

Mr. Rosenblum: I offer AJ for identification in evidence.

Mr. Hallinan: I object to AJ on the grounds of relevancy, your Honor.

Mr. Rosenblum: Also, at the same time, I ask that 26 which is in evidence and which I just read but has a different number, which is a copy which—

Mr. Hallinan. You offer this in connection with it?

Mr. Rosenblum: Yes. It was referred in——

Mr. Halliran: The same objection. The (1084) original of that is in evidence. 26.

The Court: Well, I think I will receive AJ. There was an earlier letter of the same nature which we took and I am not sure we should have, but I don't see any harm in it.

(Defendant's Exhibit AJ for identification received in evidence.)

(Mr. Rosenblum reads Defendant's Exhibit AJ to the jury.)

Mr. Rosenblum: And I am not going to read 26 because it is just exactly——

The Court: I don't think you need that. Do you really need 26?

Mr. Rosenblum: I say, I am not going to read it. It is the same as the letter I just read before this last one. It is a copy of it.

The Court: All right.

By Mr. Rosenblum:

Q. Do you have an interoffice communication of the Pennsylvania Exchange Bank dated April 16, 1952 among the papers which have been marked for identification? A. Yes. It is a memo to the file.

Q. Can you tell us whether or not that memorandum (1085) was made in the regular course of the business of the Pennsylvania Exchange Bank and whether it was the business of the bank to maintain and retain such documents?

Mr. Hallinan: Your Honor, so we can save time, I will agree to that, that all these are, without going into materiality or relevancy.

The Court: All right.

Mr. Rosenblum: I offer AH for identification.

Mr. Hallinan: I object to this on the ground of relevancy, if your Honor please.

The Court: All right. I will sustain it.

Mr. Rosenblum: Exception.

Q. Thereafter did you communicate again with your attorney? A. Yes. On April 18, 1952.

Q. Do you have a copy of the letter or correspondence or whatever it was you sent to him? A. Yes (handing).

Q. And is it this document which is AG for identification? A. It is.

Mr. Rosenblum: I offer AG for identification in evidence.

(1086) Mr. Hallinan: I object to this on the grounds that I just objected to the last document. It is the large paragraph I really object to, your Honor. The fact of its being sent I don't object to.

The Court: I will sustain the objection. If you want the first and last paragraph you are welcome to it; if you think that they don't help, we will leave this out.

Mr. Rosenblum: I except to your Honor's ruling as to the other paragraph.

The Court: And paragraphs 1 and 3 are received then.

Mr. Rosenblum: Of AG for identification.

The Court: Yes.

Mr. Rosenblum: AG for identification—I am referring to "for identification," I assume the part that you are permitting to read is in and that Mr. Hallinan will make the same suitable arrangements and delete that part that your Honor has excluded.

The Court: Yes.

(Mr. Rosenblum read portions of Defendant's Exhibit AG to the jury.)

(1087) Q. Did you thereafter receive a memorandum from Dorff & Levy dated April 22, 1952 in connection with the Nat Chernoff matter? A. I did.

Q. Will you give that to me, please? A. (Witness hands.)

Q. You hand me AF for identification. A. Correct.

Mr. Rosenblum: I offer AF for identification in evidence.

Mr. Hallinan: I object to this on relevancy, your Honor.

The Court: All right. I will sustain the objection.

Mr. Rosenblum: Exception.

The Court: I think we will go to lunch now and then get back at 2 o'clock. Don't discuss the case.

(Recess to 2.00 p.m.)

(1088)

AFTERNOON SESSION

(Jury in box.)

JAMES W. MILLER resumed.

Direct examination continued by Mr. Rosenblum:

Q. I next show you AC for identification, Mr. Miller, and ask you whether or not you sent the original of that letter to Toplis & Harding? A. Yes, on April 30, 1952.

Mr. Rosenblum: I offer AC for identification in evidence.

Mr. Hallinan: It is irrelevant, your Honor. I object on that ground.

The Court: I will receive it.

(Defendant's Exhibit AC for identification received in evidence.)

(Mr. Rosenblum reads Defendant's Exhibit AC to the jury.)

By Mr. Rosenblum:

Q. Can you tell us, Mr. Miller, whether or not you took up the matter of a compromise at the suggestion of the bonding company?

Mr. Hallinan: I will object.

The Court: I will sustain the objection.

(1089) Mr. Rosenblum: Exception.

Q. The next document, Mr. Miller, that I show you is a letter of June 4, 1952, which is in evidence as Exhibit 24.

Mr. Rosenblum: If your Honor please, this is the basis of the third count.

The Court: Yes.

Q. I first ask you whether or not you received a copy of this letter from Dorff & Levy? A. I did.

Q. And I also ask you whether or not prior to the time that you received this letter or that this letter was sent to the Government, whether you had a conversation with Mr. Dorff of Dorff & Levy regarding the letter which had previously been prepared by Mr. Levy? A. I did.

(1090) Mr. Rosenblum: Now may I stand here, your Honor, so that I can follow these documents that I want to show him?

The Court: All right.

Q. Do you recall that when Mr. Dorff was examined there was brought to his attention Defendant's Exhibit 30 in evidence and Defendant's Exhibit 31 in evidence

as well as 29 in evidence, and do you recall that he was questioned with reference to a change which was made on the second page of the letter which had been sent over, according to Mr. Dorff, to you after it had been prepared by Mr. Levy? A. I do.

Q. Now I direct your attention to the fact that in Government's Exhibit 30 in evidence, the second page, this yellow sheet, reading, "And identified the person who cashed the bonds"—I withdraw that, please.

I will start the whole sentence.

"Incidentally, Mr. Miller testified before the grand jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced (1091) to Mr. Miller as Mr. Chernoff by Mr. Mishel."

Do you recall the testimony that was given by Mr. Dorff in that regard? A. Yes, I do.

Q. Do you recall that on this same Exhibit 30 in evidence there appeared the pencilled words "And we have been informed that the person who cashed the bonds was subsequently indicted"? Now will you please tell this Court and this jury as to what your conversation was with Mr. Dorff by telephone with regard to the change that I just brought to your attention? A. I don't remember the exact word, but I called Mr. Dorff when I got this letter——

Q. When you say you got this letter, will you tell us just what you are referring to? A. I got the letter that Mr. Levy had prepared.

Q. All right. In the condition it was in, that was prepared by Mr. Levy, before your talk with Mr. Dorff? A. That is right.

Q. I understand that this would be then 29 in evidence. Take a look at it, please. A. Yes, that is the way it was when I originally (1092) received it.

Q. You are referring now to the exhibit I just last referred to as 29 in evidence? A. Yes.

Q. Will you please continue? A. I called Mr. Dorff on the telephone and pointed out to him that the phrase in there that stated exactly what I had testified before the grand jury and I thought that that was not a proper thing to put in a letter.

Q. Did you say that to Mr. Dorff? A. I did.

Q. All right. A. Because everytime you appear before a grand jury they admonish you not to repeat what you had testified to before the grand jury. And I thought that that should not be in the letter and I suggested that to Mr. Dorff. And he says, "I will take it out."

Q. Now the words which appear, that is, taking out the words where you gave the details of what you testified to in the grand jury and in their place put the words "And we have been informed that the person who cashed the bonds was subsequently indicted," will you tell us whether this is your language or Mr. (1093) Dorff's language? A. It is not my language. The next thing I know he sent back a corrected second page.

Q. But did he tell you how he was going to change it? A. If he read it to me on the phone he possibly did; I don't recall.

Q. In other words, the part with reference to being indicted was left in but the details were taken out? A. Correct.

Q. Thereafter, do you know whether or not the Treasury Department sent a letter in reply to the letter which they received from Dorff & Levy? A. They sent a reply I think to Mr. Levy and a copy to me or vice versa, I don't know which.

Q. Do you recall, going back for the moment, at the time of your talk with Mr. Dorff as to whether or not at that time Mr. Levy had already left for Europe? A. He told me had sailed I think the previous day.

Q. Dorff told you that? A. Yes.

(1094) Q. Now you then say that thereafter you did receive a letter from the Treasury Department of at least a copy of the letter which was sent to Dorff & Levy in reply to their letter of June 4, 1952? A. I did, yes. The letter dated July 14, 1952.

Mr. Rosenblum: I will offer this at this time. I offer Defendant's Exhibit Y for identification in evidence.

Mr. Hallinan: No objection.

(Defendant's Exhibit Y for identification received in evidence.)

(1095) Mr. Rosenblum: May I, your Honor, read both 24 as well as Y, 24 being the basis for the third count?

The Court: We have already read 24, haven't we?

Mr. Rosenblum: Yes. I have been reading the others.

The Court: 24 is a longer letter, two pages?

Mr. Rosenblum: It is a page and a small fraction.

The Court: All right, go ahead.

(Mr. Rosenblum reads Government's Exhibit 24 and Defendant's Exhibit Y to the jury.)

Q. Now, Mr. Miller, did you ever tell any Treasury agent that the man who was brought in by Mishel remained at some distance from your desk and that you never even bothered to look at this man and therefore could not furnish his description? A. I did not.

Q. Did you give the agents a description? A. I did.

Q. Did you thereafter testify before the grand jury in connection with that person? A. I did.

(1096) Q. And was he thereafter indicted? A. He was.

Q. I show you these last two documents on that file and ask you to look at them and tell us whether or not—we will take one at a time—as to U for identification whether you sent the original of that letter to Toplis & Harding, Inc.? A. I did.

Mr. Rosenblum: I offer U for identification in evidence.

Mr. Hallinan: I will object on the ground of relevancy.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception.

Q. Thereafter, was the claim paid by the Pennsylvania Exchange Bank to the Government in the sum of $6648.50? A. Yes, it was.

Q. And were you reimbused by the bonding company? A. We were.

Mr. Rosenblum: I will withdraw this letter, if your Honor please. It is just an acknowledgment.

Q. Now, Mr. Miller, that completes that file.

Let me now ask you what the procedure was (1097) at the Pennsylvania Exchange Bank where an unknown person appeared——

Mr. Rosenblum: Withdraw that.

Q. First, whose primary duty was it to cash savings bonds? A. Tellers.

Q. Will you tell us in an instance where an unknown person, that is, a person unknown to anyone in the bank,

appeared at the bank with a savings bond, could the teller cash it? A. He could.

Q. Under what circumstances? A. The person presenting the bonds could present evidence of licenses or registrations or various things to identify who he was, and if it satisfied the teller, the teller would cash the bonds.

Q. In other words, if he had identification which was satisfactory in the eyes of the teller, he could cash it? A. Yes, sir.

Q. Now, if he had no such identification, could he cash it? Could a teller cash a bond for a person who came in who had no identification? A. Not unless he was in some way satisfied that (1098) the person identified himself.

Q. Now can you tell us whether or not if a person who was unknown to the bank and had no identification was identified by a known depositor of the bank who informed the teller of his basis for knowing this unknown person, could the teller then cash the bond for the unknown person? A. Yes, he was instructed and authorized to make such cashings.

Q. Was there any rule to the effect that under no circumstance could a teller cash a bond for an unknown person even if he is identified by a depositor of the bank—properly identified by a depositor of the bank—without the approval of an officer? A. No, there was no such rule.

Q. Mr. Mishel testified that on the occasion when the first bonds were cashed, that there was some sum like $884 turned over to him by you and that on that occasion he gave you $100. Is that the fact? A. That is not true.

Q. He also stated in a general way that in connection with all the other bonds which were cashed, that he gave you 10 per cent of the amount represented by the cashing. Is that the fact? (1099) A. That is absolutely untrue.

Q. Did you ever receive any theatre tickets from Mr. Mishel? A. No.

Q. Was there any occasion when you did procure tickets from him or through him? A. There was one occasion where one of the directors of the bank called me up one afternoon and wanted to get two tickets for that night for South Pacific, and he said he had to have them, it didn't matter what they cost. So I asked the boys on the platform if they knew anybody who could get two tickets in a hurry. One of the clerks said that Mishel could get tickets, and I told him to get a couple of tickets from him. He got the tickets and paid him for them.

Q. At Christmas time did Mr. Mishel, as other depositors did, send in some different items to be distributed to the employees?

Mr. Hallinan: I will object to the form, your Honor.

The Court: Sustained.

Q. Did Mr. Mishel ever send in anything to the bank in the form of gratuities for the employees?

(1100) Mr. Hallinan: I will object to the form of this, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

Q. Now you recall Mr. Mishel testified that the Chernoff bonds were turned over by him to you with the words "I trust you," and that you then put those bonds into your desk. A. That is untrue.

Q. Do you recall that testimony? A. Yes, I recall it. That is untrue.

Q. Well, tell us whether or not you had a key to your desk. A. Yes, I had a key.

Q. Can you tell us whether or not there was a duplicate key to your desk at all times in that bank? A. Yes, there was a duplicate key to my desk that hung on the duplicate key rack.

Q. On what? A. Duplicate key rack.

Q. Was that duplicate key in that rack to your knowledge at all times? A. It was there all the time that I was in the bank.

(1101) Q. I mean during the period that you were there. A. Yes.

Q. Now do you recall, Mr. Miller, that Mr. Mishel testified with reference to a $5000 bearer negotiable U. S. bond? Do you recall that testimony? A. Yes, I heard that testimony.

Q. At the time he claimed he said to you, "Hello, Jim" —by the way, did he ever call you Jim? A. Never.

Q. "Hello, Jim, I says, I got a $5000 negotiable bearer bond, coupon bond. I would like to get it cashed.

"He says, 'What's the story with it?'

"I said, 'It's a little bit long.' "

Now was there ever an occasion when he took up with you the cashing of a $5000 bearer negotiable U. S. bond which I think it was referred to as "long" and another place it said it was "warm"? A. No, he never discussed anything like that with me.

Q. He testified that you asked him for the numbers and that you would then give him, that you would then call him back. Did you ever ask him for (1102) any numbers? A. There was no such conversation, so there was nothing about numbers or anything about the bond either.

Q. Was there any place to your knowledge where numbers could be checked? A. I never had occasion to check any numbers and I never heard of such a place, to this minute I don't know any such place.

Q. Since this investigation came into being have you

checked to determine who at the bank handled the cashing of a $5000 bearer negotiable bond? A. I have.

Q. Who was that? A. Mr. Littlefield.

Q. Did you countersign a check which was issued? A. I countersigned the check the next day, yes.

Q. Was it a practice of the bank for two signatures to be on the check? A. Yes. Many an occasion of course I signed checks the next day.

Q. Was there some practice by some notation being (1103) made on the check in such a way that you could tell whether or not the check was signed by you the next day? A. I had a secret sign that only myself and the auditor knew which would indicate that the check wasn't signed at the time it was issued. Also, there is a duplicate of each check which when the check is typed up there is a duplicate copy of it. When I signed the check I would also sign on the duplicate. And if my signature didn't appear on the duplicate then it means that I didn't sign it at the time it was issued.

Q. In this instance does your signature appear on the duplicate? A. No, sir, it does not.

Q. Mr. Mishel also testified that he paid you some money in connection with the cashing by the bank of the bond I have just referred to for 5000? A. That is not true.

Q. Mr. Miller, you have heard the testimony, have you not, of Mr. Mishel to the effect that—the testimony I mean in this trial here—on one occasion when he said some of the Chernoff bonds were cashed, quoting Mr. Mishel, that when the teller (1104) balked about cashing or said he wanted more information before he would cash the bonds, Mr. Mishel said that you said to Kennedy to tell him, "Take your hat and coat and go home"—"Go in the back and take your hat and coat and go home, I'm still the boss." Did that ever occur? A. It never occurred, no.

Q. Horan, as to the same occasion, the witness Horan

testified that what Kennedy said to him was, "Mind your own G. D. business and do as I was told."

Did you make that statement to Kennedy? A. I am not given to swearing in front of my employees, and I never made any such statement.

Q. There was some testimony with reference to your giving Mr. Wilmot, who was a witness in this case, some opera tickets. A. Yes, I heard that.

Q. Were those tickets given to Mr. Wilmot in connection with the testimony he was to give in this trial? A. No. They were given to him because there were nights that my wife and I couldn't go. I knew that Mr. Wilmot was—he sings in a choir professionally, he is very much interested in music. And I was very (1105) happy to have the opportunity to give those tickets to him.

Q. On occasions did you give tickets to other people in the bank? A. Yes. I gave them to my secretary, and I believe I gave them to one of the guards one time also. Maybe others. Over a period of ten years I can't recall all of them.

Q. There was a witness here who testified by the name of Sam Siegel. A. Yes, I saw him and heard him.

Q. Do you have a recollection of ever speaking to him in your life or seeing him? A. I have no recollection of ever seeing the man. I am sure I never spoke to him. When he sat here in the box I didn't even recall who he was.

Q. He testified, as you recall, that he delivered sealed envelopes in some of which were theatre tickets and in others money. Did that ever occur? A. No, never.

Q. Do you recall a witness by the name of Schnabel who testified that he had come to the bank? Had you seen Schnabel at the bank? A. Yes, I recognized him. He was a messenger (1106) for Mishel's business.

Q. Can you tell us whether or not in connection with Mishel's business at the bank from time to time vari us

papers or documents were brought to the bank by either Mishel or his messengers? A. Oh yes, on many occasions.

Q. Tell us under what circumstances it would be necessary for him to send any documents. A. If he sent a note over to the bank that he had purchases, say, from a corporation and the note was made to a corporation we couldn't accept it until we had had executed a corporate resolution authorizing the transfer of that note from the payee to Mishel or one of his companies. If we were checking a note which he had presented and decided to take the note the credit department would make up this corporate resolution and Mishel would send over and get it, have it executed and returned, and that note would be discounted.

If the note was made payable to an unincorporated company, a trade name, as you are familiar with, it would be necessary for him to get a certified copy of the trade certificate and submit it with the note.

In some cases he would send over a note which (1107) we checked and he might have additional information in his office such as a credit report which he would send over for our credit man to read, so we wouldn't have to draw another report.

In some cases there were guarantees would have to be executed by the people who were the payees of the notes. There were a number of papers, many papers. I don't know whether I have covered them all or not.

Q. Did some of these papers come to you? A. Yes.

Q. Some to the credit department? A. Yes.

Q. Some to the tellers? A. Well, I don't think any would go to the tellers.

Q. Not on loans? A. No, not on loans.

Q. Would deposits come to you? A. No.

Q. Or would deposits go direct to tellers? A. They would go direct to the tellers.

Q. Let me give you one broad question. Did you at any time receive envelopes containing money other than

money in connection with a legal operation or (1108) transaction of the bank? Did you ever receive money in sealed envelopes or open envelopes from either Mr. Siegel, Mr. Rosenberg, Mr. Schnabel, Mr. Mishel, or any other person? A. No, never.

The Court: I am not clear what your question is. What is it, did he ever receive money or did he ever receive money except in connection with a legal transaction? Which is it?

Q. Let me put it this way: From time to time were there occasions when money was paid for legitimate outstanding obligations at the bank?

Mr. Hallinan: I object to the form, your Honor. Ask him what was done.

The Court: I think you ought to put it in a general way.

Mr. Rosenblum: As to what?

Mr. Hallinan: I am not going to suggest, Mr. Rosenblum. You know what.

Q. Can you tell me whether or not Mr. Mishel had any personal loans at the bank? A. He had a loan on a Cadillac automobile which was payable in monthly installments.

(1109) Q. Can you tell us whether or not that was a loan that was established at the 38th Street branch but which could be paid at either the 48th or 38th Street branches? A. It was.

Q. And could you tell us whether or not with regard to payments of that loan money would be sent down by Mr. Mishel or brought by him? A. Well, I can't testify from any personal knowledge myself.

Q. Who would that go to? A. Well, it would go to a teller.

Q. That would not come to you as an officer? A. No.

Q. At any time for any illegal or improper purpose did you receive cash in envelopes, sealed or open, or in any other way from Mr. Sam Siegel? A. Never.

Q. Would the same answer apply if I asked you about Mr. Norton Schnabel? A. Same answer; never.

Q. Can you tell us whether or not the answer would be the same if I asked you whether or not it would (1110) apply to Irving Mickey Rosenberg? A. Same answer; never.

Q. And how about Mr. Mishel himself? A. Same answer; he never gave me any money.

Q. Did any other person deliver money to you for an illegal purpose as coming from Mr. Mishel or from any other person? A. Never at any time.

Q. When I mention Rosenberg's name, it reminds me: there is testimony here by Mr. Mishel that at the time Mishel testified he was having Rosenberg make some changes on the bonds and or the redemption forms in one of the rooms in the back near the safe deposit vaults, and he testified that on that occasion you came in there, leaned over the shoulder of Rosenberg and said in connection with the bonds and also in connection with the redemption forms, "Don't sign the name here but sign it here," and then that was as to the bonds and as to the redemption forms again you said to Rosenberg, "In the back there, in the back there; don't sign here. Sign it there," in several different places? A. That never happened.

Q. In the record, Mr. Miller, it appears—(1111) I think yesterday I showed it to you—where there is a reference to five $1000 Missouri Railroad stocks or bonds without tying it into anything else, but Mr. Mishel testified and

threw in as part of his statement something about five $1000 Missouri Railroad stocks or bonds; do you recall that?

Mr. Hallinan: I will object to the form of the question, your Honor.

The Court: Sustained.

Q. Mr. Mishel testified with reference to—made a comment with reference to five $1000 Missouri Railroad bonds; do you recall that? A. Yes, I recall that.

Mr. Hallinan: I do not like these words about "comment," "testified." If he wants to ask him what the man testified to, I do not object to it, but I think these side comments are objectionable.

Mr. Rosenblum: I will take the record if you want me to. I did not want to take the time.

Mr. Hallinan: If that is the only way you can put it correctly, do so.

The Court: We will go on. We have had (1112) this one answered. Go on.

Q. Mr. Miller, tell us, was there an occasion when Mr. Mishel did put up as collateral five $1000 Missouri Railroad bonds? A. The records show that on one occasion he made a loan of, I think, $1300 secured by five $1000 Missouri Pacific Railroad bonds. The loan—I don't know—was for 60 days or something, and it was paid.

Q. For a certain period of time? A. Yes.

Q. Was there ever anything said to you at any time that there was anything wrong with those Missouri Pacific bonds? A. Never. I never even heard any inference of it until he testified here.

Q. Your records do show that there was a loan in the sum of approximately $1300? A. Yes.

Q. Was that loan paid? A. It was.

Q. Were the bonds returned to Mr. Mishel? A. So the records indicate.

Q. For that matter, in connection with the $5000 (1113) U. S. Savings Bond that he testified about, did you ever hear there was anything wrong with that bond? A. No, I haven't heard it even until now. I don't know what is wrong with it. All the time I worked in the bank, there was never any notice that there was anything wrong with it and I have asked the people in the bank and they have never heard that there is anything wrong with it.

Q. One of the witnesses—I don't remember who—made a statement that he believes or he thinks that you were on one occasion at Mishel's office.

Tell us, were you ever at any one of his offices, wherever those offices may have been A. I was never in his office and I never saw him outside of the bank in my whole life until I saw him here.

Q. Mr. Mishel testified that he made payments of moneys to you in the Time and Life Building near the bank.

Do you know whether there is a Time and Life Building near the bank? A. Yes, the Time and Life Building is right across the street from the bank.

Q. Is that a large building? (1114) A. Oh, yes, very large, very busy corridor runs through that building.

Q. Did you ever meet Mr. Mishel in a corridor of the Time and Life Building? A. Never.

Q. He says he made payments to you—that is, when he testified—in a little bar at 59th Street and Park Avenue.

Were you ever in a little bar at 59th Street and Park Avenue with Mishel? A. Never.

Q. He also testified that he made payments to you at a nice little restaurant down the street on 48th Street.

Were you ever at a nice little restaurant on 48th Street with Mr. Mishel? A. No, sir, I was not.

Q. He also testified that on one occasion he was with you at Quo Vadis.

Now, will you tell us when for the last time you were at Quo Vadis? A. I have never been to Quo Vadis Restaurant.

Q. Never in your life? A. Never in my life.

(1115) Q. You were never there with Mishel? A. Never with Mishel or with anyone.

Q. I think I asked you about a meeting that Mr. Mishel claims he had with you at the Holland House, and I think on another occasion he said he paid you money at the Holland House.

Did you ever meet him at the Holland House? A. I never met him at the Holland House; he never paid me money anywhere.

Q. There or at any other place? A. No place.

Q. Mr. Miller, do you recall making loans to Mr. Mishel in connection with his or his wife's liquor store sometime in 1950? A. Yes, we made two loans to the liquor store. I believe it was in March of 1950.

Q. Do you know whether those dates would be about March 2 and March 9, 1950? A. Yes. I actually don't recall, but we have looked at the records recently. I know those are the two dates.

Q. Will you tell us, please, who applied for the loan? A. Mr. Mishel.

(1116) Q. Will you tell us where it was that he applied for the loan? A. At the bank.

Q. Now tell us what happened on that occasion. A. He made an application for a line of $10,000 for the liquor store. My line limit was $5000.

Q. When you say "my line", just what do you mean by that? A. That I could hand him right away without referral. I gave him a loan of $5000, and the other $500

I held and waited for the executive committee, and they approved the $5000. That's how it happened to be that the loan was split into two dates.

Q. Did he submit any data of any kind with regard to his application for these two loans? A. He submitted a financial statement as of the end of the previous calendar year, yes.

Q. And do you recall the name of the liquor company at that time? A. I guess it was Mishel Wine & Liquor.

Q. You say that you, on the occasion of his applying, granted his request for $5000 based upon the information he made available to you? (1117) A. I did.

Q. Was that information added to the other credit file data which was available at the time? A. Yes. After I looked at the statement, I put it in with the credit file and handed the file and the statement back to the credit manager.

Q. Then thereafter what did the executive committee do? A. They approved the additional $5000.

Q. And was that a unanimous approval? A. Yes.

Q. And the other $5000 was advanced to him? A. Yes.

Q. Do you recall for how long a time that loan was supposed to run? A. I don't recall, but I would say we usually made the loans for 90 days.

Q. Can you tell us whether or not the Mishel Wine & Liquor Company paid that $10,000 loan or the two loans totalling $10,000? A. No, they never paid the loans.

Q. Will you tell us what happened? A. Well, shortly after we made the second $5000 loan, we received information that he didn't (1118) own the store. At the time he made the loan he had already sold the store. I got him into the bank and asked him——

Q. Who received the information? A. It came to me, I believe, through the credit department.

Q. Under your system, did the credit department keep current with information as it became available from vari-

ous sources as to the persons who owned money to the bank?

Mr. Hallinan: I will object to the leading question, your Honor. I have not very much, but I will this time.

The Court: Sustained.

Q. You say you got that information from the credit department? A. From the credit department, that's right.

Q. Will you tell us what that information was? A. That the store had been sold on a date prior to the date that we made these loans.

Q. That would be some date prior to March 2, 1950? A. Yes, yes. So I got Mishel into the bank and I asked him to explain it, and he said it was true he (1119) had sold the store but that under the system that the State Liquor Authority had, when you sold the store the transaction was held in escrow for 30 days while the State Liquor Authority checked the new owners to see if they would qualify for license, and he said that the money was all there and that it was his intention when the deal was finished to pay the loan at the bank.

I said that didn't satisfy me. I said, "You had no right to come in here and say you owned the store and give us a financial statement and make a loan when you didn't even own the store."

And I insisted that he pay the loan immediately. He said that he couldn't pay the loan immediately, he says, "But I don't want you to worry. I will put up collateral for the money."

He came into the bank—I don't know whether it was a few days later or a couple of days later—and he had collateral consisting of stock exchange securities.

(1120) Q. Do you recall the name of the person to whom the securities had been issued? A. The securities

were issued in the name of Frank and Sadie Alpren. I told him that he would have to have a hypothecation certificate which would authorize him to borrow on the securities. I gave him the form. He took it out and had it executed and brought it back. So the loan was put on a collateral basis.

Q. And that hypothecation agreement was supposed to be signed by whom? A. The owner of the—the registered owner of the securities.

Q. And that was the name that appeared on the hypothecation agreement that was delivered to the bank? A. Yes.

Q. Do you recall whether that was sworn to before a notary, if you recall? A. My recollection is that it wasn't.

Q. It wasn't. All right. Now can you tell us what the value of the securities that you just described came to that he put up as collateral for the $10,000 loan? A. No, I can't tell you that; I don't recall.

(1121) Q. Was it in an amount which satisfied you that it protected the loan for the bank?

Mr. Hallinan: I object to this, your Honor.
The Court: Sustained.

Q. Can you tell us whether it was in an amount the same, less, or more than the amount of the loan? A. More.

Q. More than the amount of the loan? A. Yes.

Q. Were they all stock exchange securities? A. I believe they were, but I wouldn't want to say definitely. I don't remember the names of the various stocks. My recollection is that they were all listed.

Q. You say he brought these in and left the securities as collateral with the hypothecation agreement? A. Yes.

Q. When for the next time did you do anything with regard to that loan? A. Sometime I believe it was a month or maybe two months later, I am not sure of the

exact time, but sometime I believe in May, Mr. Reedy, the vice-president of the bank from the 38th Street office, who was in charge also of the Small Loan Department, (1122) came up to the bank and told me that he had received a tip that something was wrong with the liquor store loan and the securities. I don't recall exactly what he said was wrong, but the tip was that there was something wrong and that we should look into it. I told him to go down and see the District Attorney.

Q. What District Attorney did you send him down to see? What office? A. New York County District Attorney. And he went down and reported the matter to the Assistant District Attorney there. And some time later two detectives came into the bank, I don't know whether they had a stop order or a pick-up order, but whether they had a stop order at that first visit, some time later anyhow on a pick-up order they took the securities out of the bank and said they were stolen.

Q. They were stolen from—Alpren's securities were stolen? A. Yes.

Q. After the occasion when you sent Mr. Reedy down to report what you had learned about the securities which later turned out to be stolen, did you appear as a witness before the grand jury? A. Yes, but it must have been a couple of years (1123) later. I think it was 1952 I believe.

Q. '52? A. Yes.

Q. Did you appear and testify against Mishel? A. I did, I did. And he pleaded guilty and got the sentence that he is serving right now.

Q. That is, 10 to 20 years? A. Yes.

Q. You say that you sent Mr. Reedy down about May 1950? A. Yes.

Q. Is that right? A. Yes.

Q. Did you later learn that on October 6, 1950 four or

five months later, Mr. Mishel was arrested in connection with a Federal matter? A. Yes.

Q. Arising out of the Chernoff bonds? A. Mr. Sershen told me that.

Q. I just want to get the date. You sent Reedy down about four or five months before the date of that arrest? A. Oh, yes.

Mr. Hallinan: I think that is clear, your (1124) Honor.

Q. Now you say you also testified before the grand jury against Rosenberg in connection with the Chernoff bonds? A. Yes, I did.

Q. Do you know whether he went to jail in connection with that?

Mr. Hallinan: I will object to this, your Honor.

The Court: Sustained.

Q. Do you recall about when you testified against Rosenberg in the grand jury?

Mr. Hallinan: I object to that.

The Court: Objection sustained.

Mr. Rosenblum: Exception.

I think I am about finished. I would like to check my notes, if I may.

The Court: All right. We will take a brief recess now. We will take a recess until 20 minutes past three.

(Short recess.)

The Court: All right. Have you anything else, Mr. Rosenblum?

(1125) Mr. Rosenblum: No, I have no further questions.

The Court: All right.

Cross examination by Mr. Hallinan:

Q. Why didn't you go down to the District Attorney's office with this information about Mishel's loan? A. I had other people in the bank to do things like that.

Q. You had processed the loan, hadn't you? A. Yes.

Q. You knew more about it than anybody in the bank? A. I wouldn't say that I knew any more about it.

Q. I am sure you wouldn't.

Mr. Rosenblum: May we——

Mr. Hallinan: I am sorry. I withdraw that.

Q. Who else knew as much about it as you did? A. The credit department had all the records of the loan.

Q. They knew it from records; you knew it from two sources, the records and personal contact? A. Yes.

Q. You didn't go down precisely because you (1126) didn't want the whole roof to blow off your relationship with Mishel? A. Of course not.

Q. Of course not.

Mr. Rosenblum: May we have no comment.

The Court: Don't repeat the answer.

Mr. Hallinan: I am sorry, your Honor.

Q. Now you testified that you never remembered Siegel until he took this witness stand, you have never seen him until he took this witness stand? A. I certainly don't recall him; no.

Q. Did you ever hear the name before? A. Yes.

Q. The name was on record at the bank, wasn't it?

A. The records at the personal loan department of 38th Street which didn't come under my review.

Mr. Hallinan: May we have this marked for identification, please.

(Marked Government's Exhibit 45 for indentification.)

Q. I show you Government's Exhibit 45 for identification and ask you what it is, Mr. Miller? A. That is a signature card for a checking account in the name of Sam Marco.

(1127) Q. Any other names on it? A. Care of Sam Siegel.

Q. Where was that record kept, Mr. Miller? A. In the signature file at 48th Street.

Mr. Rosenblum: May I see that, please?

Mr. Hallinan: Yes (handing).

Q. You maintain that you have never seen Siegel or this individual that testified at this trial, is that right? A. I certainly didn't recall him; I still don't.

Q. Could you have seen him at the bank, do you think? A. It is possible, yes.

Q. But you have no doubt about the fact about knowing Norty Schnabel? A. No doubt about it at all.

Q. And how do you know him? A. Well, he was, as you saw, he is quite a large man, and he had a harelip and——

Q. I am sorry. Go ahead. A. He stuck in my mind.

Q. It would be very difficult to forget a person like that, wouldn's it? A. Correct.

(1128) Q. Mr. Miller, do you recall being examined before trial in 1951 in the matter of the Pennsylvania

Exchange Bank, Plaintiff, against Rialto Realty Corporation, Irving Spieler and Irving Mishel, Defendants, and a third party action, Rialto Realty Corporation, Third Party Plaintiff, against Irving Mishel and James W. Miller, Third Party Defendants? Do you recall that matter? A. I recall the matter. I don't recall the part of it that you refer to.

Q. Do you recall giving testimony under oath in connection with that hearing? A. I probably did.

Q. Do you recall it? A. Not offhand, no.

Q. Do you recall that that hearing was held at the bank, at the Pennsylvania Exchange Bank, 48th Street branch, 20 West 48th Street, on April 19, 1951, at 2.30 p.m.? A. It could have been. I don't recall it offhand.

Q. Do you recall being asked these questions and giving these answers:

"Q. Do you know a person by the name of Morty (1129) or Mortimer Schnabel?

"Mr. Weiss: The same objection, the same reservation.

"Mr. Merzansky: You don't know who this fellow is. How can you object to it?

"Mr. Weiss: I don't see what it has got to do with the examination."

I will say parenthetically I am just reading this because this matter appears as colloquy.

"I am making my objection on the record. You don't mind, do you?

"Mr. Merzansky: No.

"Mr. Weiss: Do you know what the question is, Mr. Miller?

"A. Mortimer Schnabel?

"Q. Yes. A. No."

Do you recall being asked those questions and giving those answers in 1951? A. I don't actually recall, no.

Q. Now the reason you say you remember him is because he is a heavy-set fellow and has a harelip and he is not easily forgotten; is that correct? A. That is correct, yes.

(1130) Q. Were you asked these questions and did you give these answers:

"Q. You have never met anyone by the name of Morty or Mortimer Schnabel?

"Mr. Weiss: I object on the ground that the witness has answered the question. I direct him not to answer.

"By Mr. Merzansky:

"Let me try to describe him to you. Would it help your memory if I told you that he was a person that had a harelip and was a messenger in the employ of Irving Mishel?

"Mr. Weiss: The same objection, the same reservation. He may answer.

"A. No, it doesn't.

"Q. Does that refresh your recollection? A. Not a bit, no."

Do you recall being asked those questions and giving those answers in 1951? A. I don't recall, no. But I do know that recently the name Morty Schnabel came up, and I asked Brennan, I said, "Who is this Morty Schnabel?"

And he said, "Well, he is the fellow with the harelip, the big fat boy from Mishel's office."

(1131) Q. And that is what a few months back refreshed your recollection as to Morty Schnabel? A. Yes.

Q. If you asked this question that you say you now cannot recall would it have helped refresh your recollection in 1951? A. I should think so, yes.

Q. And that is precisely the last question I read to you, wasn't it, a description of that man? A. What was your question again?

Q. That is precisely the question that I just read to you, a description of this man with a harelip, wasn't it? A. Yes, yes.

Q. What connection was there between Morty Schnabel and Irving Mishel? A. He was a messenger or runner for him.

Q. In the employ of Irving Mishel? A. I don't know. He said he was.

Q. When was that, back when you knew him at the bank? A. He said it right here.

Q. Well, was he a messenger for Mr. Mishel; did you know that? (1132) A. He came into the bank as a messenger, yes.

Q. Do you recall in this same examination in 1951 being asked this question and giving this answer:

"Q. Well, do you know any person in the employ of the defendant Irving Mishel? A. No."?

My question is simple, Mr. Miller. Do you recall being asked that question? A. I don't recall any of these questions. I thought I made that plain in the beginning.

Q. I think you testified—you correct me if I am wrong—that Mishel used to send messengers to the bank on his errands. A. Yes.

Q. You recall that now? A. I just said it about a half-hour ago, yes.

Q. That is very good. You will just have to be patient with me because I might have a lot of questions to ask you, Mr. Miller.

Mr. Rosenblum: May the last part be stricken out?

The Court: All right.

James W. Miller—Defendant—Cross

Q. Do you recall in 1951 at this examination (1133) before trial being asked this question and giving this answer:

"Q. Did Irving Mishel at any time within your knowledge cause certain moneys to be brought to the bank for deposit or for any other purpose by a messenger in his employ? A. It could have been, I wouldn't know"?

Do you recall that question and that answer? A. No, I don't recall any of this hearing that you are talking about.

Q. Do you recall testifying, Mr. Miller, that up until two months ago the term "stiff accounts" had never crossed your life, you had never heard it before? A. Up until recently, yes. I don't know whether I said two months, but recently.

Q. I think you said several months. A. Yes.

Q. Have you thought about that statement since you made it? A. No.

Q. Would you think about it now and tell me if that is the first time that you ever heard that term? I want you to go way back to 1931 and come forward and (1134) see if you ever heard that term before? A. I don't recall ever having heard it before.

Q. Didn't you hear it in 1931 when the State Banking Department forced you to close several stiff accounts? A. I don't recall it, no.

Q. Would you say it did not happen, Mr. Miller? A. No, I wouldn't say it didn't happen.

Q. Do you recall ever being examined by the State Banking Department back around 1931? A. No.

Q. Do you recall ever being examined by the State Banking Department in connection with "stiff account"? A. No.

Q. You don't recall an examination in 1954 pertaining in part to that? A. No.

Q. Did the State Banking Department ever force you

to close any account at the Pennsylvania Exchange Bank? A. I couldn't say. They probably could have or they could not have. I don't recall.

(1135) Q. Wouldn't you remember something like that, Mr. Miller? A. I don't remember it at the moment, no.

Q. You have no recollection at all? A. Not at the moment, no.

Q. Can you ever recall being examined by the State Banking Department at any time? A. Yes.

Q. When was that? A. A few years ago.

Q. Do you recall a man by the name of Collier who used to work at the Pennsylvania Exchange Bank? A. Oh, yes.

Q. What period of time was he employed at the bank? A. I don't know when he started there. He was there with me up until about, I would say, 1944, 1945, when he died.

Q. In what capacity was he employed? A. President.

Q. And in what capacity were you employed while he was there? A. Vice-president.

Q. Do you recall at any time in your association (1136) with Mr. Collier while you were at the bank Mr. Collier criticizing you for making loans to bookmakers? A. No.

Q. You cannot recall that? Would you say it did not happen? A. I don't remember him criticizing me about anything like that, no.

Q. Do you recall Mr. Collier at any time——

Mr. Rosenblum: May I, if your Honor pleases, object to this entire line?

Mr. Hallinan: May we approach the bench?

Mr. Rosenblum: I am keeping in mind your Honor's previous ruling on proof that was offered.

Mr. Hallinan: I will argue it completely.

The Court: I won't sustain the objection to the

entire line of testimony, but I am not making any commitment as to how I will rule on individual questions. You just make your objections as they come up.

By Mr. Hallinan:

Q. Do you recall at any time during your association with Mr. Collier while he was president at the bank his criticizing you for allowing bookmakers (1137) to draw against uncollected funds?

Mr. Rosenblum: I object to this question. I do not think it is relevant and I do not think it is within the scope of the examination.

The Court: I will sustain your objection to the question on form.

Mr. Hallinan: May I be heard, your Honor?

The Court: Yes.

Mr. Hallinan: We will have to be heard at the bench.

The Court: All right.

(The following proceedings took place at the bench, not in the presence of the jury.)

The Court: I sustained the objection because of your characterization "criticizing." You can ask about any conversation you want.

Mr. Hallinan: Then there is no argument.

Mr. Rosenblum: My objection is based upon the fact that your Honor said in connection with the examination of witnesses you would limit it only to convictions.

The Court: No, as going to credibility, I let you go into matters going to credibility as to false testimony as to his prior convictions. You (1138) explored that fully.

Mr. Hallinan: I think I am proceeding on the theory with which your Honor is well familiar, 224 Fed. (2d), the Pogano case. On his direct examination there are about 20 pages in the record of his background at the bank.

Mr. Rosenblum: Exception.

(Proceedings were resumed within the hearing of the jury as follows.)

By Mr. Hallinan:

Q. Did Mr. Collier ever state to you that you were allowing bookmakers to draw against uncollected funds? A. I don't recall.

Q. Did you in fact allow bookmakers to draw against uncollected funds? A. I don't recall.

Q. Would you say you did not? A. Oh, no, I wouldn't say I didn't.

Q. What constitutes an uncollected fund, Mr. Miller? A. It is a check that has not been paid at the time a payment is made against it by the bank.

Q. And for a bank—correct me if I am not (1139) stating this correctly—but for a bank in New York where a check is deposited, assume that it was deposited in the Pennsylvania Exchange Bank, drawn on another New York bank, you have a three-day period in which the other bank cannot dishonor the check; is that correct, so for three days it would remain an uncollected item on your record? A. That is not so.

Q. What is so? A. A check deposited in the bank today, you get credit the next morning at 9 o'clock. So it could only be uncollected for the day that it is deposited in the bank.

Q. What do you allow for out-of-town items? A. We have a schedule. Of course, it has changed over a period

of years. You would have to tell me the exact time you are referring to.

Q. Did Mr. Collier ever ask you to stop allowing certain accounts to kite checks? A. Not to my knowledge.

Q. Did you in fact allow people to kite checks? A. No.

Q. Do you recall being examined by the State Banking Department back in 1931 as to allowing a person (1140) by the name of Harry Brown, a bookmaker, to make book in a public telephone in the lobby of the Pennsylvania Exchange Bank? A. No, I don't recall any such examination back in 1931.

Q. Did that in fact happen? A. It did not happen.

Q No one made book from the bank, that is what you are saying? A. They certainly did not.

Q. Did you ever allow anyone at the bank to cash checks knowing that the endorsment of the payee was not the proper one, not the proper person making the endorsement of the payee? A. I don't recall any such incident, no.

Q. Have you ever heard of the name Richard R. Newman? A. Is this the Newman we have been talking about here?

Q. Did you ever hear of the name Richard R. Newman? A. Possibly. We had a lot of Newmans.

Q. Did you ever hear of the name Richard R. Newman? (1141) A. I couldn't say.

Q. Didn't you in fact allow him to cash checks on his endorsement on the back of the payee when you knew he was not the payee? A. I doubt it. I don't recall it.

Q. Now, isn't it a fact, Mr. Miller, that from at least 1931 up to shortly before you left the bank you allowed people to have accounts there in fictitious names? A. No.

Q. You thought about that for a minute. Is there any doubt in your mind about that? A. No, there is no doubt in my mind.

Q. Did you ever make a loan while you were at the bank in excess of the statutory amount? A. Did I personally?

Q. Yes. A. Well, we had some argument with the Banking Department at one time as to whether loans we made exceeded the statutory limit or not. According to my interpretation and the bank's interpretation and the committee's interpretation, they didn't exceed the statutory limits.

Q. The argument you refer to is a full-scale (1142) investigation by the Banking Department; isn't that right, Mr. Miller? A. I don't know what you mean by a full-scale investigation by the Banking Department, and I don't know what you refer to.

Q. Did they examine you under oath at that time in connection with that matter? A. Did who examine me—the Banking Department?

Q. Yes. A. No.

Q. Are you sure about that? A. I am quite sure.

Q. Did you ever certify checks against uncollected funds while you were at the bank? A. No.

Q. Are you sure about that? A. There was a question like that came up some years ago. Yes, it was a practice in the bank at that time not only for me but for other officers to do it.

Q. But it was your practice at that time? A. It was the practice of the bank, yes.

Q. Is that a safe banking practice? A. I don't quite get your question.

Q. Let me break it down. There are certain (1143) practices that a bank might follow which might not be safe from the bank's viewpoint monetarily.

Now do you understand the question? A. Oh, it was a safe practice, yes. As a matter of fact, it's been the practice in Wall Street—in those days they had one-day

certifications which were certified against uncollected without anything.

Q. Did you follow that practice also at the Pennsylvania Exchange Bank? A. We didn't do any stock exchange business.

Q. You referred to another practice down on Wall Street. Was it also your practice to certify when nothing was in the account? A. No.

Q. Now, didn't you allow Mishel to kite checks in one of his accounts? A. I did not.

Q. Can you tell us as a banker what one of the first signs of a check kite is in an account? A. Well, I haven't been on that operating end in such a long time I couldn't tell you what would be the first thing, no.

Q. Not the first thing; anything. A. You said the first thing.

(1144) Q. I am sorry. Anything that might indicate to a banker by looking over certain records at the bank that a check kite might be in existence. A. Yes, I would say that if he was what we could call covering every day, depositing checks to cover checks that were already in full payment.

Q. Now, you check me if I am wrong, but so that the jury might understand, I want to give a brief description of a check kite. Would this be correct to say: Take two banks in New York, Bank A and Bank B. I go into Bank A and I write out a check. I open a small account, say with five dollars, assuming that can be done. I write out a check drawn on Bank B for a thousand dollars. I deposit it in my newly opened account in Bank A. I immediately draw a thousand dollar check against my account at Bank A. The following day I come back to Bank A, I repeat the same procedure, then I hustle over to Bank B and deposit a thousand dollars for the incoming check.

Does that basically describe a check kite? A. Yes, that is a very good and simple explanation of it.

Q. And you say one of the good signs is a person that is drawing against uncollected; is that right? (1145) A. No, I didn't say that.

Q. I am sorry. You say what you did again, then. A. I said if he was covering his checks every day.

Mr. Hallinan: Mark those, please.

(Marked Government's Exhibit 46 for identification.)

Q. Let us talk about Mishel for a moment. Wasn't he doing that, precisely that? Wasn't he coming down to the bank daily to find out what the state of an account was, to get cash in, to get checks in to meet incoming items, exchange items? A. He didn't come to me about it, no.

Q. Mr. Miller, did he come to the bank? A. He was in the bank quite often.

Q. Did he come for that purpose? A. I couldn't tell you whether he came for that purpose alone or not.

Q. Did you have referral sheets at the bank for that purpose for different accounts, to find out what was in, what they want to draw that day and so forth? Did you have referral sheets? A. Yes. We have two types of referral sheets.

(1146) Q. What are the two types? A. One for the checks that come through the exchanges and those that are over the window. No, I am wrong. It is only the two sheets, one for each office. They are all put on the same sheet.

Q. It all relates to exchange items basically, doesn't it? A. Yes.

Q. What is in that day for collection and what they want to take out of the account? A. That is right, correct.

Q. I show you Government's Exhibit 46 for identifica-

tion and ask you if you recognize—I think there are 26 slips in there—if you recognize those documents? A. Yes. Those are charges made against the account of Irving Mishel for paying checks which apparently came through the exchanges and were covered the same day.

Q. On the description I just gave you and with which you agreed, would that be some evidence of a check kite in existence? A. It possibly could, yes.

Mr. Hallinan: I think I would like to (1147) circulate these, your Honor.

Mr. Rosenblum: It is not in evidence yet.

Mr. Hallinan: You are right. I will offer them in evidence.

Mr. Rosenblum: I object to this offer at this time unless there is a showing first made that it is connected with Mr. Miller. I don't know whether it is——

The Court: I will sustain the objection.

Q. Do you know, Mr. Miller, who handled Mishel's—first of all, do you know if there was a referral sheet daily for Mishel at the 48th Street branch of the bank? A. A separate sheet?

Q. Either a separate sheet or a referral sheet—I will withdraw that.

The referral sheet was a sheet of paper with various accounts listed on it, was it not? A. Oh, yes.

Q. Was there that type of sheet referring to Mishel's account? A. I don't recall that he had a separate sheet, no.

Q. I am not saying a separate sheet. Was there a sheet reflecting his name on it or his account? (1148) A. There was a referral sheet made up every day and if this—if he were on the referral list his name should be there, yes.

Q. Do you recall that Mr. Lucey at one time and Mr. Brennan at another used to handle that as far as Mishel

was concerned, the referrals? A. They would handle the referral sheet for everybody.

Q. I understand that. If you will just try to understand that my question is only limited to Mr. Mishel at the bank I think it will be a little clearer and a little easier.

Do you recall that Mr. Brennan and Mr. Lucey used to handle the referral sheet for other people probably also but for Mr. Mishel? A. They handled the daily referral sheet. They handled it for the bank, not for Mr. Mishel.

Q. Did they handle the sheet with Mr. Mishel's name on it called the referral sheet? A. Yes.

Q. The pieces of paper in Government's Exhibit 46, don't they grow out of the matter that would be contained on that referral sheet? A. Yes.

(1149) Mr. Hallinan: I will reoffer that, your Honor.

Mr. Rosenblum: I still submit, if your Honor please, there is no showing that Mr. Miller had anything to do with this.

Mr. Hallinan: He knows about the sheet with Mishel's name on it.

The Court: I think you had better develop what a referral sheet is.

Mr. Hallinan: Does your Honor wish to adjourn now?

The Court: I did. But if you want to clean this up, all right, but if it is going to get us off into several questions we will have to adjourn to tomorrow.

Q. Do you know what a referral sheet is, Mr. Miller? A. Yes.

Q. Would you describe it for the Court and jury, please? A. It is a sheet that is made up every day. Checks come to the bank to be paid, they come through what we call

the exchanges. A messenger goes down to the Federal Reserve Bank every morning and he picks up all the checks that are drawn on our bank. They (1150) go into the bookeeping department to be posted on the ledgers, and the checks which are uncollected or short, according to the bookkeeper's calculation, on the ledger, are then listed on this referral sheet.

That referral sheet is then sent—there is one made for the 38th Street office and there is one made for the 48th Street office. The one at the 48th Street office, they got the information by telephone from the bookkeeping department which was in 38th Street. They make up the sheet. Then the officer or chief clerk who was handling the referral sheet would take them to the tellers to see if the deposits had been made to cover these checks that are uncollected or short; also to make sure that the checks were actually uncollected they would check back in the bookkeeping department, because many times checks were listed on the referral sheet as short which were not short, because the system that we used on the deposit ticket, when the delays are posted, if there's ten checks on the deposit ticket the delay is calculated for the entire amount for the check that takes the longest to collect. I think now that that system has been changed and they break it down by day so as (1151) to know when the various funds are good. The officer in charge of the referral sheet went into all of that, to make sure that the checks were properly referred, that they weren't covered, that they were uncollected or they were short or they were covered. I believe that the manager or chief clerk had a limit which he could okay if it is uncollected, or short, too, because sometimes a check would come in which was short and the man handling the referral sheet would telephone to that customer. There might have been an error. So he would call, and if the man said, "Well, I am going to send the deposit over," and if the man, the chief clerk or the

manager thought warranted that service we would okay it and we would pay it, even though it made an overdraft. Other items would be referred to an officer for approval. When the sheets were brought to the officer, the one down at 38th Street, one to me, in most cases we would ask the man handling the sheet what he thought about it, and if he says "Okay" or "All right," we would initial it.

Mr. Hallinan: I will reoffer 46, your Honor.

The Court: All right. I will receive it.

Mr. Rosenblum: I renew my objection.

(1152) The Court: You objected on the ground that there was no showing that it came to the witness's notice.

Mr. Rosenblum: Yes. That is one thing. And second, that it is something that comes within his province to handle. I think it is clear from the answers that he gave that it comes in the province of other people outside of himself. I don't think that just because——

The Court: I will receive it.

Mr. Rosenblum: I will accept.

The Court: All right.

(Government's Exhibit 46 received in evidence.)

The Court: We will recess now, and you and counsel can come in at 10.45 instead of 10.30. But I will ask you to be here prompt at that time tomorrow.

(Adjourned to October 30, 1956, at 10.45 a. m.)

(1153)

New York, October 30, 1956;
11.00 o'clock a. m.

Trial resumed.

(Jury present.)

JAMES W. MILLER resumed.

Cross examination continued by Mr. Hallinan:

Q. Mr. Miller, do you recall yesterday being asked this question and giving this answer——

Mr. Rosenblum: Just a moment. I think we had reached the point with reference to the 26 documents.

Mr. Hallinan: Oh, I am sorry. Yes. Thank you for reminding me.

I did want to circulate those with the jury.

Mr. Rosenblum: No, before that. I wanted to be heard on this question of their admissibility. I think no foundation has been laid, I don't think that there has been any testimony which has been adduced from this witness up to this point which ties it in to him so that he could be the person through whom these documents can come in, if they do come in at all.

(1154) The Court: There is no question but that they are records kept in the regular course of business.

Mr. Rosenblum: No; I am not taking a technical position as to that.

The Court: I think that on the question of relevance, why, there is enough to let them come in, and then the weight will be a question of fact.

Mr. Rosenblum: I except.

Mr. Hallinan: Your Honor, in one document which I had the witness identify, and I forgot to offer yesterday, I should like to offer at this time. It is Government's Exhibit 45 (handing to Mr. Rosenblum).

There is no objection to this, your Honor.

(Government's Exhibit 45 received in evidence.)

Mr. Hallinan: I should like to circulate both of those.

The Court: All right.

(Mr. Hallinan hands to jury.)

(1155) The Court: May I see you a second, Mr. Hallinan?

(Mr. Hallinan approached bench.)

By Mr. Hallinan:

Q. Mr. Miller, do you recall being asked this question and giving this answer yesterday:

"Q. Can you tell us"——

Mr. Rosenblum: What page?

Mr. Hallinan: 1106, top of the page, first question.

Q. Do you recall being asked this question and giving this answer:

"Q. Can you tell us whether or not in connection with Mishel's business at the bank from time to time various papers or documents were brought to the bank by either Mishel or his messengers? A. Oh, yes, on many occasions"?

James W. Miller—Defendant—Cross

Now, my first question is: what do you mean by "papers and documents"? A. When he had notes to discount which were made to a trade name or a corporation, he would send the corporate resolution or certified copy of the trade certificate. There are other papers I can't recall at the moment.

(1156) Q. So we have two so far, notes and resolutions? A. No, I said notes, resolutions, certified copies of trade certificates.

Q. Who would bring these documents to the bank? A. Well, I can't separate who brought which. Sometimes Mishel might bring them in, sometimes he might send them over with a messenger.

Q. Was this true of every transaction where notes were involved? A. No.

Q. Where wasn't it true? A. Where wasn't it true?

Q. Yes. A. Where the note was made to an individual.

Q. Were the Rialto notes made to an individual? A. I don't recall. I would have to see the notes, Mr. Hallinan.

Q. You don't recall? A. No.

Q. In a case where the note was made to an individual, who would bring that over? A. Mr. Mishel might bring it over or he might send it over.

Q. Send it by whom? (1157) A. A messenger.

Q. Do you remember any of his messengers besides Mr. Schnabel? A. No, I don't.

Q. Mr. Schnabel is the only one you recall? A. He is the only one I recall.

Q. I will ask you the same question I asked you yesterday. Do you recall testifying in 1951 in a pretrial examination in the matter I directed your attention to yesterday? A. I don't recall the circumstances, no. I remember the title of the case.

(1158) Q. Do you recall being asked this question and giving this answer in the examination:

"Q. In every instance that the bank discounted obliga-

tions described in Exhibit 5 and Exhibit 6 for identification, were the notes delivered to the bank by Mishel personally? A. I couldn't say positively but I believe so. I don't remember any instance where they were sent over by messenger."

Do you recall being asked that question and giving that answer? A. I don't recall that, but from the way you read it it applied to specific obligations, not to general obligations.

Q. What ones, Mr. Miller? A. I don't know. You just read it there.

Q. You have a recollection of it, don't you? A. No. I remember the case, but I don't remember the notes that were involved or how many notes there were.

Q. I am going to refer to 1107 of the record yesterday. Do you recall being asked these questions and giving these answers yesterday:

"Q. Would deposits come to you? (1159) A. No.

"Q. Or would deposits go direct to tellers? A. They would go direct to the tellers."

Now once again I direct your attention to the examination before trial in 1951. First of all, who would make the deposit? A. What deposit, Mr. Hallinan?

Q. Did Mishel make deposits at the bank? A. Well, he had accounts there. I am sure he must have made them.

Q. Do you recall being asked these questions that I read to you from yesterday:

"Q. Would deposits come to you? A. No.

"Q. Or would deposits go direct to tellers? A. They would go direct to the tellers."

Do you recall answering those questions? A. Yes, sir.

Q. You don't seriously have any difficulty in what I mean when I say did Mishel make deposits at the bank, do you, Mr. Miller? A. If I inferred that, I am sorry.

Mr. Rosenblum: I think, if your Honor please, may I ask your Honor to look at that page to see (1160) whether or not the thing to do is to read what preceded that, so we get the full import of the subject matter.

Mr. Hallinan: Mr. Rosenblum will have time at the proper time——

Mr. Rosenblum: I object to there being taken from the minutes questions at a certain point unless the entire subject matter is given to the witness.

The Court: I have read the entire subject matter and I don't see any harm. As I understand, whatever lack of mutual understanding there is between Mr. Hallinan and Mr. Miller does not come out of anything that is on the rest of that page, so we will go ahead.

Mr. Rosenblum: It is what precedes it.

The Court: Or what precedes it.

Mr. Rosenblum: Exception.

Q. I direct your attention once again to the examination before trial, 1951, and I ask you if you recall being asked this question and giving this answer:

"Q. Did Irving Mishel to your knowledge ever send over a messenger boy to make deposits for him? (1161) A. Frankly, I don't take the deposits, so I wouldn't know."

Do you recall being——

Mr. Rosenblum: What page are you one?

Mr. Hallinan: I am on the examination before trial, on page 47.

Mr. Rosenblum: Oh.

A. I don't recall being asked that, and I don't recall the answer. But as I was not a teller——

Q. If you did give that answer would it be a lie then? A. No, I don't tell lies, Mr. Hallinan.

Mr. Hallinan: May we have these marked, the three separately?

(Government's Exhibits 47, 48 and 49 marked for identification.)

Q. I show you Government's Exhibits 47, 48 and 49 for identification and ask you what they are? A. No. 47 is a memo dated June 15, 1950 to Mr. Levy, counsel for the bank, from me, subject Irving Mishel.

No. 48 is a memo dated July 26, 1950 to Mr. Levy, counsel for the bank, from me, subject Irving Mishel.

(1162) No. 49 is a memo from me dated August 16, 1950——

Mr. Rosenblum: I can't hear you, Mr. Miller. Keep your voice up.

A. A memo from me dated August 16, 1950, addressed to Mr. Levy, of Dorff & Levy, counsel for the bank, from me, subject Irving Mishel.

Q. Now do those memos relate to this action that I have referred you to, the Rialto action? A. Yes.

Mr. Hallinan: The Government will offer these.

(1163) The Court: If the jury can stand the strain, we will go through until 12.30 and then come back at 1.45, because we got started late.

Mr. Rosenblum: I object on the ground of relevancy. I do not see any relevancy to them. At this time, anyway.

Mr. Hallinan: I am laying the circumstances

surrounding the examination so that I might refresh——

The Court: I will receive it.

(Government's Exhibits 47, 48 and 49 for identification received in evidence.)

Mr. Hallinan: They are brief and I should like to have Mr. Miller read them one by one to the jury, if he will, please.

(Witness reads Government's Exhibit 47 to the jury.)

Mr. Hallinan: Would you read the next one to the jury?

(Witness reads Government's Exhibits 48 and 49 to the jury.)

By Mr. Hallinan:

Q. Did you actually enclose the complaint in the documents referred to therein when you communicated with Mr. Levy? (1164) A. I suppose the secretary did. I don't send out the mail.

Q. Did you instruct her to do it, Mr. Miller? A. I think she was competent enough to know that they go with it.

Q. So you did not? A. No, I saw no need to instruct her.

Q. Now going back to that examination again, see if I can refresh your recollection.

Do you recall that in that examination you were represented by the law firm of Dorff & Levy, who we have heard of in this case already? They were represented by a Mr. Bernard Weiss, who actually accompanied you during the examination in the bank and acted as your counsel or counsel for the bank, and the attorney for the defendants and the third party plaintiff was a man by the

name of Samuel Mezansky, who had an office at 350 Fifth Avenue.

Does that bring back this examination to you, Mr. Miller? A. No. I said that there was such an examination but that I didn't recall the details of it.

Q. There was such an examination at the bank, was there not? (1165) A. There must have been, yes.

Q. And you don't recall the details? A. No.

Q. Do you recall generally what the examination was about? A. No. I remember generally what this case was all about, if you want to know.

Q. Mr. Miller, why in 1951 did you deny knowing Norty Schnabel? A. I probably didn't remember him at the moment.

Q. He was described to you, wasn't he? A. Yes.

Q. You do recall that, don't you, Mr. Miller? A. I don't recall that he was described to me. You read it out there, so it must be the fact.

Q. Why did you deny in 1951 that you knew anybody in the employ of Irving Mishel, Mr. Miller? A. I wouldn't say that I denied knowing—that I didn't know anybody in the employ of Mishel.

Q. Do you want me to read that question and answer again to you? A. Yes, I say I don't recall it.

Q. And if I read it to you again you still wouldn't recall it? (1166) A. I doubt if I would recall it. I don't recall the details of that examination.

Q. Can you think of any reason now why in 1951 you might have denied knowing anybody in the employ of Irving Mishel? A. No, I can't think of any reason.

Mr. Hallinan: Your Honor, I would like to offer the examination before trial. I have discussed this with Mr. Rosenblum. May we approach the bench just briefly?

The Court: All right.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: If Mr. Rosenblum wants to demand it, I will have to put on technical proof of the stenographer and perhaps the attorneys. Do you want the——

Mr. Rosenblum: I don't know until I get more information. I am trying to get more information on it.

Mr. Hallinan: I will have to line up these people.

Mr. Rosenblum: I would like to help you. I have been trying to cooperate with you so much (1167) at times it is even funny. I think I went further than I should have, but I think this is a matter that is new to me. I want to look into it and I want to see whether there is a reason I cannot agree.

Mr. Hallinan: I will get the witnesses for technical proof and have them tomorrow, probably.

(Proceedings were resumed within the hearing of the jury as follows.)

By Mr. Hallinan:

Q. You testified yesterday, Mr. Miller, that you granted Irving Mishel a personal loan and that collateral consisted of Missouri Pacific bonds; is that correct? One of the loans, a loan in the approximate amount of $1300? A. Yes.

Q. You knew exactly what was wrong with those bonds then, didn't you, Mr. Miller? A. I didn't know there was anything wrong with them, and I don't know now.

Mr. Hallinan: Mark this, please.

(Marked Government's Exhibit 50 for identification.)

James W. Miller—Defendant—Cross

Q. I think in going over your background you went into some detail. You have had considerable experience (1168) with securities and investments, have you? A. Yes.

Q. I show you Government's Exhibit 50 for identification. I ask you what it is? A. It is the collateral card.

Q. On what? A. On a collateral loan made to "I. Mishel, Special."

Q. Is this the card referring to the matter that we have just discussed? A. Let me see.

Q. (Handing.) A. Yes.

Mr. Hallinan: The Government offers Exhibit 50.

Mr. Rosenblum: No objection.

(Government's Exhibit 50 for identification received in evidence.)

Q. Mr. Miller, do some bonds come with coupons attached? A. Yes.

Q. Would you describe to the Court and jury what coupons are on the bonds? A. Coupons are little tickets attached to a bond (1169) which are cut off and sent in to get your interest on the bond.

Q. When are they sent in ordinarily? A. Some people send them in every year, some people send them in every three years, some people don't ever send them in at all.

Q. What is the ordinary procedure?

Mr. Rosenblum: I object.

Mr. Hallinan: He said he has had experience.

Mr. Rosenblum: I think he has explained it, about the word "ordinary," and I think he gave all three examples.

The Court: I will overrule the objection. Add: if there is one.

Q. If there is an ordinary procedure, what is it?

Mr. Rosenblum: I will withdraw my objection.

A. I don't know. In the bank, the bank certainly always cuts off its coupons and sends them in the day they are due. What other people might do I couldn't tell you.

Q. Do you have any experience with individuals with respect to bonds and coupons, from your past experience in investing in securities, advising in (1170) securities? A. Yes, but I never asked them what they do with their coupons. I have seen bonds brought in to the bank that had coupons for years attached.

Q. When you get a bond as collateral in the bank, or bonds, and the bonds are past due, does that have any significance to you? A. Of course not.

Q. You would treat those the same way as you would a bond not past due? A. Exactly the same.

Q. Can you tell us what coupons were attached to these Missouri Pacific's—withdrawn.

Can you tell us when the loan was made? A. According to the record here, it was made February 8, 1950.

Q. When was the bond due? A. Due May 1, 1949. These were bonds that were in default. I mean, they are traded in on the stock exchange every day.

Q. Those bonds were in default, did you say? A. Yes.

Q. What coupons were attached to the bonds when you received them? (1171) A. It says here on May 1, 1933 and subsequent coupons attached, SCA.

Q. That is what SCA means, subsequent coupons attached? A. Yes.

Q. So the coupons went all the way back to 1933, did they, attached to the bonds, from that notation? A. Yes.

Q. Does it say when in 1933—they were due twice a year, weren't they? A. It says here payable May 1st and November 1st.

Q. I think, if I am wrong you correct me, somewhere yesterday or the day before you testified that you did not know where you could check bonds, any place you could check them; is that correct? A. What do you mean

by checking bonds? We check the market value on the telephone, yes.

Q. Where? A. At our brokers.

Q. Are bonds in default as good security as bonds not in default? A. Yes.

Q. They are. (1172) A. Just exactly the same according to their market value.

Q. What does it mean when a bond is in default? A. They are not paying interest.

Q. So that kind of bond is just as good for security purposes as bonds paying interest? A. Just as good for collateral purposes as any—in any bank in New York City.

Q. Don't you know as a fact if you really wanted to check those bonds you could have called the Missouri Pacific Railroad? Couldn't you? A. We had no practice of checking bonds with the Missouri Pacific Railroad or any other place.

Q. Isn't it a fact, Mr. Miller, that your relationship with Mishel was so lucrative that you didn't care, first of all, if he put up security, secondly, if he did put up security what kind of security it was? A. That is absolutely untrue.

Q. There isn't a word of truth in that, is there? A. Not a word of truth in it. This particular security is very good.

Q. You have testified that you know Irving (1173) Luria? A. Yes.

Q. He is still a depositor at your bank? A. Yes.

Q. Now have you——

Mr. Rosenblum: I did not get the name that you mentioned.

Mr. Hallinan: Irving Luria.

Mr. Rosenblum: I was talking to Mr. Perry.

Q. You have testified that you recall that it was Mr. Luria who brought Mr. Mishel into the bank? A. Yes.

Q. Now when he brought him in you knew exactly what the relationship between Mr. Luria and Mr. Mishel was, didn't you? A. No, I did not.

Q. Didn't you know as a fact, Mr. Miller, that they at that time were engaged in a black market operation pertaining to perfume? A. No.

Mr. Hallinan: May we have these marked, please?

(Marked Government's Exhibits 51, 52 and 53 for identification.)

(1174) Mr. Hallinan: I want to step up to the bench just for a minute, please.

Mr. Rosenblum: Me?

Mr. Hallinan: Yes, you, Mr. Rosenblum.

Mr. Rosenblum: Don't be so assertive. You just say "Yes."

Mr. Hallinan: I am——

Mr. Rosenblum: Never mind.

(The following proceedings took place at the bench out of the hearing of the jury.)

Mr. Hallinan: I haven't mentioned this before because in most trials I think it hardly worth mentioning, but since Mr. Rosenblum the other day did point out something, that I was grimacing to the jury, I want to point out for the last ten minutes Mr. Rosenblum has been smiling, shaking his head in disgust during these questions in the open presence of the jury. Further, which I did not point out before, almost the entire time that the witness Mishel was on the witness stand Mr. Rosenblum was shaking his head and going tsk, tsk, tsk.

Mr. Rosenblum: I haven't been.

Mr. Hallinan: I would like the record——

Mr. Rosenblum: But if you look at the (1175) record you will see he says, "Now, Mr. Witness, raise your voice." Then he takes this thing and throws it on the desk. I don't grimace at all. You can see me because I am in front of you, and I am very careful.

The Court: These things can happen without thought, especially as the trial drags on. Just avoid any demonstration like that.

Mr. Rosenblum: I haven't watched my people, but I don't think so. But I can't see what they are doing. As far as myself, I know——

The Court: Several days ago, the only instance I noticed was Mr. Rooney put on a broad smile about something.

Mr. Rosenblum: He shouldn't have.

The Court: Those things have happened. I have done it myself.

Mr. Rosenblum: I want to say, you see the way Mr. Hallinan even now walks up and throws something if he doesn't like an answer.

Mr. Hallinan: I didn't so indicate.

The Court: You were throwing papers all over on Mr. Mishel's cross-examination.

(1176) (The following proceedings were had in open court.)

By Mr. Hallinan:

Q. Mr. Miller, you testified yesterday, at the close of yesterday's session, about these referral sheets and the relationship of Mishel to those. I show you Government Exhibits 51, 52 and 53—well, withdrawn.

James W. Miller—Defendant—Cross

In connection with the referral sheets were exchange checks ever shown to you in connection what was in for that day? A. The actual checks that came through exchanges? I doubt it.

Q. Were notations made of what was in for the day on the referral sheet? A. Yes.

Q. What kind of notation would it be? A. It is a long list. I mean, I don't remember the exact details of the sheet.

Q. I show you Government's Exhibits 51, 52 and 53 for identification and ask you what they are? A. They are three checks made by Irving Mishel payable to——

Mr. Rosenblum: They are not in evidence, (1177) if your Honor please. I think we have a sufficient description at the moment until they are admitted.

The Court: All right.

Q. Were they exchange items at the Bank? A. What do you mean by "exchange items"?

Q. If they were deposited in the Pennsylvania Exchange Bank in Luria's account, they would be charged off Mishel's account as exchange items, wouldn't they?

Mr. Rosenblum: I object to the form of that question.

Mr. Hallinan: He said, "What do you mean?" I am telling him what I mean.

Mr. Rosenblum: If something is offered. I would like to see what is shown the witness.

Mr. Hallinan: They are not offered yet.

The Court: I assume he is trying to lay a foundation for the offer.

Mr. Hallinan: Precisely.

The Court: You can ask him.

Mr. Rosenblum: I object to the form of the question.

The Court: I will let the question stand. It does not need to be answered yes or no. Qualify your answer as you see fit.

(1178) The Witness: What is the question?

The Court: Read the question.

(Question read.)

A. Well, we are getting mixed up on terms, Mr. Hallinan. We don't call these exchange items. Exchange items are items that come to us through the exchanges. These we call house items.

Q. In the referral sheet, did the referral sheet reflect what was charged off to the account on that particular morning? A. No, it had nothing to do with what was charged off on the account. It was items that were not paid on the referral sheet and house items were not listed on the referral sheet.

Q. Well, what was the purpose of the referral sheet, again? A. If you want to take the time, it is quite a little explanation. We went over it yesterday. The purpose was that when the items come in from the exchanges, from the Federal Reserve Bank, in the morning, they go to the bookkeeping department, they are sorted out according to accounts. The bookkeepers then post them on the individual ledgers for the respective accounts that the checks are made (1179) out to. When they come across a check which would overdraw the account——

Q. All right, just stop there. When they come across a check that would overdraw the account, how would they know whether or not the account was going to be overdrawn unless they took into consideration a house item that was going to be charged off to the account on that day? A. They didn't.

Q. They did not take house items into account at all?

A. No. The way that that was covered, when a house item was deposited or paid, the teller who took that, if it was a check that was paid, he would transmit that information to the bookkeepers over the TelAudograph and they would mark it on the ledger just with a pencil "Hold a thousand dollars" or "Hold $300" or whatever it is. So when they posted the checks from the balance shown on the ledger sheet, they would deduct whatever amount was written alongside to be held for the tellers.

Q. Was the referral sheet made out after that operation? A. Oh, yes. It wasn't made out until late in (1180) the afternoon.

Q. What was not made out until late in the afternoon? A. The referral sheet.

Q. Then, in effect, it would reflect the state of the account taking into account these house items, wouldn't it? A. Yes.

Q. Those are checks of Irving Mishel drawn on the Pennsylvania Exchange Bank, aren't they? A. Yes.

Q. Did you ever see those checks before? A. No, I don't think so.

Q. Do you recall at any time having those checks called to your attention by either Mr. Luria or Mr. Mishel? A. No, I don't think so.

Q. Did you ever discuss with Mr. Luria or with Mr. Mishel what their relationship was? A. No.

Mr. Rosenblum: Your Honor, may I see what was shown to the witness?

Mr. Hallinan: No, he may not see.

Mr. Rosenblum: It was shown to the witness, (1181) if your Honor please. I think I am entitled to see anything that is shown to a witness.

If you want to keep them, go on and keep them.

The Court: It is always a sign that the first week of a trial has passed.

Go ahead.

By Mr. Hallinan:

Q. Now, the matter of the stiff accounts which you have testified to. I am going to, rather than refer to the record, try to make it quicker, Mr. Miller, by summarizing your testimony, and if I am wrong in any particular you call it to my attention.

I think you testified—and there has been other testimony here—that ordinarily an opening account sheet is the first document filled out.

Mr. Rosenblum: Mr. Hallinan, would you mind letting me look at the witness?

Mr. Hallinan: I am sorry.

Q. The opening account sheet is the first document filled out and then the signature card is filled out, and I think you further testified that that portion of the signature card or the opening account sheet which reads "Introduced by" merely means, as you say, (1182) that the officer's initials or name—I think in most cases initials—would go in who got credit for the account.

Am I right thus far? A. Yes.

Q. But you also claim that that does not necessarily mean that that is the person who physically opened up the account? A. That's right.

Q. And that "opened by" would have next to it the initials of the person who physically handled the opening sheet or the signature card in the mechanics of opening physically the account; is the correct? A. It should have it, yes.

Q. I show you Government's Exhibit 44 in evidence and ask you what signature card was that? What account was it for? A. I. Mishel, Special.

Q. Whose initials does it have next to "Introduced by"? A. J. W. M., my initials.

Q. It is not actually your initials, but it is typewritten in? A. It is typed.

(1183) Q. Next to "Opened by" are what initials? A. J. J. B.

Q. And they stand for what? A. Brennan.

Q. Now I show you Defendant's Exhibit K for identification and ask you what that is? A. That is a signature card of the Mishel Wine & Liquor Corporation.

Q. And what is Defendant's Exhibit M for identification? A. Signature card for the Berkshire Wine & Liquor Company, Special.

Q. And Defendant's L for identification? A. This is a signature card for the Mishel Wine & Liquor Corporation.

Q. And Defendant's N—take them both at the same time—and O for identification?

Mr. Rosenblum: What are the last two?

Mr. Hallinan: N and O.

A. These are signature cards for the account of Helen Mishel.

Mr. Hallinan: The Government will offer Defendant's Exhibits K, L, M, N and O.

Mr. Rosenblum: If you have photostats of (1184) these forms, I have no objection to their going in. Maybe we can save time.

Mr. Hallinan: No, I don't have.

Mr. Rosenblum: No objection, your Honor.

The Court: Received.

(Defendant's Exhibits K, L, M, N and O for identification received in evidence as Government's Exhibits 54, 55, 56, 57 and 58.)

By Mr. Hallinan:

Q. I have gone over 44 with you, Mr. Miller. 43 in evidence is an opening account sheet, is it not? A. It is.

Q. And next to "Introduced by" it has what initials? A. J. W. M.

Q. And over on the right hand corner it has what? A. J. J. B.

Q. What would that indicate to you, looking at this opening account sheet? A. That he opened the account.

Q. And going back to 44 for a minute, that is also what "Opened by J. J. B." would indicate to you on the signature card, which is Government's Exhibit 44? (1185) A. Yes.

Q. I show you 54 in evidence and ask you if this is a signature card for Mishel Wine & Liquor? A. It's the signature card for the account of Mishel Wine & Liquor.

Q. And Government's Exhibit 55 is also a signature card for Mishel Wine & Liquor? A. Yes.

Q. Next to "Introduced by" are the initials "J. W. M." They stand for your name; right? A. Yes.

Q. And next to "Opened by" are the initials "J. J. B." A. Yes.

Q. They stand for Mr. Brennan again? A. Yes.

Q. Once again, this would indicate that you got credit for the account but that Mr. Brennan actually physically opened the account; is that right? A. That's what it should reflect, yes.

Q. Do you have any doubt that that is what it does reflect? A. Well, not being familiar with the actual transaction itself, I can only judge from what is on (1186) the cards.

Q. And Government's Exhibit 55, which is the Mishel Wine & Liquor signature card, would that indicate—the initials J. W. M. next to "Introduced by" that you got credit for the account? A. Yes.

Q. And that it was opened by J. J. B., Mr. Brennan? A. Yes.

Q. And both initials are on there; is that correct? A. Both initials are on there.

Q. Government's Exhibit 56 is the Berkshire Wine & Liquor Company, Special. What does it have next to "Introduced by"? A. J. W. M.

Q. What does it have next to "Account opened by"? A. J. J. B.

Q. Mr. Brennan, correct? A. Yes.

Q. That once again would indicate that you got credit for it, that Mr. Brennan physically opened it; is that correct? A. That's what it should reflect, yes.

Q. Are all these records wrong, do you think? (1187) A. I don't know. All I want to point out is I was not there at the moment these cards were prepared, so I can only tell you—testify to from what is on the cards, not from any personal knowledge.

Q. Is it your experience that the records were pretty accurately kept at the Pennsylvania Exchange Bank? A. Pretty accurately kept, yes.

Q. Government's Exhibit 57 is the signature card for Helen Mishel, is it not? A. Yes.

Q. Are your initials next to "Introduced by"? A. Yes.

Q. And R. H. L., that is Mr. Littlefield, is it, next to "Opened by"? A. Yes.

Q. Once again, that would indicate that he physically opened it and that you got credit for it; is that correct? A. From the card, that is what it indicates, yes.

Q. And is this a signature card, Government's Exhibit 58? (1188) A. It is a signature card—it is a duplicate of the other one.

Q. There is certain matter crossed out; is that correct? A. Yes.

Q. And with additional information on the bottom? A. Yes.

Q. And that has the initials "Introduced by J. W. M." and "Opened by R. H. L."? A. That's right.

Q. And that is Mr. Littlefield, is it? A. Yes.

(1189) Q. Mr. Miller, I show you Government's Exhibit 10 in evidence and I ask you why there is no initial next to "Opened by" in the signature card of Thomas Young? A. I couldn't tell you. I did not prepare the card.

Q. Isn't it precisely because, Mr. Miller, you foresaw this very day and you planned at that time, as you have been here, being able to state that since your initials were not on or next to the "Opened by" that you knew that you could claim, as you have been here, that you got credit for this account but you know nothing of this account? Isn't that precisely the reason why there are no initials next to "Opened by"? A. It is so ridiculous, all I can say is no.

Q. I show you Government's Exhibit 11 for identification and I ask you why there are no initials next to "Opened by" in the John Case signature card? A. I did not prepare the card so I couldn't tell you. My initials are on there as introduced by me.

Q. Do you know anything about a man by the name of John Case? (1190) A. No.

Q. Did you ever meet John Case? A. Not to my knowledge, no.

Q. Did you ever hear the name John Case? A. We talked about him here recently. I don't recall.

Q. Apart from this, have you ever heard of him? A. I don't recall, no. We had thousands of accounts.

Q. Do you take any interest, or did you take any interest in the accounts for which you got credit? A. If they developed into borrowers' accounts I took a particular

interest; otherwise they went right into the files and were handled like every other account.

Q. Did you ever discuss the John Case account with Irving Mishel? A. No.

Mr. Hallinan: Did your Honor want to adjourn at 12.30?

The Court: If this is a good time. We will adjourn now. Come back at 1.45.

(Recess to 1.45 p. m.)

(1191)

AFTERNOON SESSION

JAMES W. MILLER resumed.

Cross examination continued by Mr. Hallinan:

Mr. Hallinan: May we have these marked, please.

(Government's Exhibits 59, 60 and 61 marked for identification.)

Q. Mr. Miller, I show you Government's Exhibits 59, 60 and 61 for identification and ask you what they are? A. These are opening sheets for three accounts.

Q. What three accounts? A. S. H. Newman, Jack Feinman, Frank Williams.

Mr. Hallinan: The Government will offer these in evidence.

Alternate Juror No. 1: Your Honor, I think I will have to go, if you don't mind.

The Court: We will take a brief recess.

(Alternate Juror No. 1 leaves courtroom.)

(Pause.)

The Court: Is there any objection on the documents?

Mr. Rosenblum: No.

(1192) The Court: All right, I will receive them.

(Government's Exhibits 59, 60 and 61 for identification received in evidence.)

The Court: Have you any more you can mark now without being premature?

(Pause.)

The Court: Mr. Rosenblum, could I see you for a second?

Mr. Rosenblum: Surely.

(Mr. Rosenblum approaches bench.)

The Court: I am going to circulate the exhibits in her absence and show them to her when she comes in. Have you any objection?

Mr. Hallinan: Yes, because I have more testimony to go in. I am not going to circulate them. I will just point out certain things on them.

The Court: Why don't you let them see them now and then you can point out your things later?

Mr. Hallinan: Some are not in evidence yet, your Honor.

The Court: Three of them are.

Mr. Hallinan: Yes, but I want more testimony with respect to those.

The Court: Come up here, please.

(1193) (Mr. Hallinan approaches bench.)

Mr. Rosenblum: I have no objection to their being circulated now. I understand your Honor will

show them to the alternate, No. 1, when she comes back.

The Court: All right.

Mr. Rosenblum: No objection.

Mr. Hallinan: I am just trying to figure how to best keep these in order.

The Court: Just run them along one at a time.

Mr. Rosenblum: I suggest that no comment be made at this time unless the juror be present.

The Court: You send along the exhibits that don't need any explanation.

Mr. Rosenblum: Are these exhibits which I haven't seen?

Mr. Hallinan: Oh, of course not. They are in evidence.

The Court: These last three exhibits.

Mr. Hallinan: They are all in evidence.

Mr. Rosenblum: 59, 60 and 61, these are all in evidence.

Mr. Hallinan: Yes (handing to the jury).

(1194) (Alternate Juror No. 1 returned to the jurybox.)

The Court: You let me know if you feel the least bit ill.

Alternate Juror No. 1: I am sorry.

The Court: We have a whole lot of exhibits for you to read, so you won't think we weren't working while you were trying to feel better.

(Nurse enters courtroom.)

The Court: Why don't you go into the robing room if you want to talk to her. We will take a brief recess now.

(To Jury) I will give you your room back.

(Short recess.)

(Jury in box.)

The Court: All right, Mr. Hallinan.

By Mr. Hallinan:

Q. Mr. Miller, I think I had asked you if, with respect to Government's Exhibit 10, you knew Thomas Young and you said you don't know? A. No, I don't recall having seen him.

Q. Did you ever hear the name? A. Yes.

Q. Just from the witness stand, you mean? (1195) A. Mostly, yes.

Q. Where else did you hear it? A. In discussing the case with Mr. Rosenblum.

Q. And Government's Exhibit 11 is the signature card of John Case. Did you say that you didn't know John Case, you had heard of him here for the first time? A. No, I did not.

Q. I am sorry. A. I said I didn't recall the name but we had discussed this with Mr. Rosenblum.

Q. If one were to come into the bank and look at Government's Exhibit 10, the Thomas Young signature card, would he know who the account was opened by? A. No.

Q. And is that the same for Government's Exhibit 11, the John Case signature card? A. Yes.

Q. Now, Government's Exhibit 59 is an opening account sheet of S. H. Newman. Do you know that gentleman? A. No.

Q. Have you ever heard of him before apart from discussing it for this case? (1196) A. I don't recall the name. We had a number of Newmans. I don't remember anything specific about this particular one, no.

Q. And Government's Exhibit 60 is an opening account sheet for Jack Feinman. Have you ever heard that name before apart—I am excluding from my questions discussing it for this case or what you have heard from the witness stand.

Have you ever heard that name before? A. I don't recall any particular reference to the name, no.

(1197) Q. What about Government's Exhibit 61, which is the Frank Williams opening account sheet? A. I don't recall having heard anything in particular reference to this name, no.

Q. Look at Government's Exhibit 59. From looking at that could one tell who opened that account? A. Not unless they knew the handwriting.

Q. Whose handwriting is that? A. I couldn't say for sure.

Q. And 60, the Jack Feinman opening account sheet, would one know who opened that account? A. Not unless they knew the handwriting.

Q. Do you recognize the handwriting on that sheet? A. No, I don't.

Q. What about 60, the Frank Williams, would someone know who opened that? A. Not unless they knew the handwriting.

Q. Do you recognize the handwriting on there? A. No. It appears to be the same as on the Newman account. My guess would be that it is Mr. Littlefield's handwriting.

Q. You got credit for these five accounts that I have just gone over with you, did you not? (1198) A. I only saw three there.

Q. Oh, I am sorry. Thomas Young, John Case, Williams, Feinman and Newman. A. Yes.

Q. Did you ever discuss these five accounts with Irving Mishel? A. Not as far as I can remember, no.

Q. I think you have already testified that apart from customers that you might loan money to you did not take an interest in these other customers that you got credit for; is that correct? A. I didn't say I didn't take an interest. I said I didn't take any particular interc.

Q. Well, what interest did you take in these people? A. The same interest I take in the customers of the bank.

Q. What interest was that? A. To see that they all got good service and attention and the facilities of the bank were made available to them.

Q. Did you see that these five we have just discussed got good service? A. Not in particular, no.

(1199) Q. Do you remember anything about that? A. No, I don't.

Mr. Hallinan: May I have this marked?

(Marked Government's Exhibits 62 and 63 for identification.)

Q. I show you Government's Exhibits 62 and 63 for identification and ask you what they are? A. 62 is a cashier's check dated October 10, 1949, cashier's check of the Pennsylvania Exchange Bank. No. 63 is an average balance card from the records of the Pennsylvania Exchange Bank.

Q. An average balance card for whose account? A. Daniel Robino.

Q. What is the name on the check? A. Daniel Robino.

Q. Did you know what that check was issued for at the time it was issued? A. No.

Q. Do you now know? A. Yes.

Q. What do you now say it was issued for? A. It was issued in payment of securities sold in the bank.

Q. Now do you recall, or do you now know from (1200) checking records, I think you testified about this check yesterday, was a broker employed in this particular bond? A. From the records that I have looked at recently I find that there was a broker used.

Q. Would you tell us the normal procedure followed when a person brought in a bond and the Pennsylvania Exchange Bank would send it to a broker, from the time

the person brings in the bond until the time he gets a check for it, what happens? A. When he comes into the bank he would go to one of the officers, chief clerk or manager, and arrange to have the bond sold. He would sign a sales order in the book. They had a special book for that. Then after the transaction was completed in the bank he would either get a cashier's check for it or he would get the proceeds credited to his account.

Q. What was the average amount charged to a customer for such a transaction as this, assuming the bond was a $5000 bond? A. We had a scale. I don't recall. I would say maybe $2.50, $5.

Q. From checking the records you now know that $50 was the amount charged for this transaction by the (1201) bank? A. I do, yes.

Q. Would you say that is extraordinarily high? A. Well, I would say it is an extraordinary charge, yes.

Q. Would the check be issued before the arrangements were made with the broker? A. No.

Mr. Hallinan: May I have this marked as one exhibit, please.

(Marked Government's Exhibit 64 for identification.)

(1202) Q. Mr. Miller, are you aware of the procedure at the brokerage house? By that I mean that the contract would be made on one date and the check issued some time thereafter on another day. A. Yes. There is a procedure there for what is called regular delivery. I think the transactions are cleared maybe twice a week; and then, of course, there is a procedure for what is called a cash delivery.

Q. I show you Government's Exhibit 64 for identifica-

tion, and keep that place. I ask you what that is? A. The book or the sheet or which?

Q. The entire document, first of all. A. The whole thing?

Q. Yes. A. This is the book in which customers give the bank orders for the purchase and sale of securities.

Q. The particular page that we have opened there, does that reflect the Daniel Robino transaction? A. You must have it open to the wrong place. I don't see anything like that here.

Q. Does that page (indicating)? (1203) A. Yes. This is the customer's original order.

Q. Can you tell us when the arrangements were first made with the brokerage house from that? On the back of that page, are there two slips attached? A. Yes. There are three slips. One is a duplicate of the other.

Q. Does one reflect when the arrangements were made, the contract with the brokerage house? A. Well, I suppose it would be the date—it says here, "Contract date October 10, 1949. Settlement date October 11, 1949."

It is printed on here.

Q. What? A. It is printed, stamped by the broker.

Q. What does the settlement date mean on there? A. That is the date for regular delivery.

Q. Of what? A. Of the securities.

Q. Had the transaction been completed with the brokerage house in this case before the check was issued by the bank, Pennsylvania Exchange Bank? A. I can't quite follow what you are getting at.

Q. What transaction does the Pennsylvania Exchange (1204) Bank, in a case like this, limiting it to this, have with the brokerage house? A. Somebody phones the broker and gives him the order, and then the securities are either sent down, or, if it is a cash delivery, they are sent up.

Q. What do you mean by "cash delivery"—cash from

the brokerage house to the bank? A. No, we get a check. We call it a cash delivery. It means the transaction is completed the same day.

Q. Does that reflect when the Pennsylvania Exchange Bank got the check from the brokerage house? A. I don't see anything here that reflects that. Maybe I haven't looked close enough.

(Referring to document.) No, I can't tell from these records when the bank got the check.

Q. But you say the settlement date on there, October 11, does not mean the day on which the check was issued by the brokerage house? A. No.

Q. Did I ask you if you are now aware that $50 was charged by the bank for this transaction? A. Yes, you asked me that question.

Q. What was your answer? (1205) A. I said yes, I knew it.

Q. Mr. Littlefield is dead now, isn't he? A. Yes.

Q. Does your signature appear on the Daniel Robino check? A. Yes, this is my signature. This is the signature I told you the other day was affixed to the check subsequent to the time it was issued.

Q. This is also the check that I think you recall Mishel testified was for the bond that he called you on the telephone about and made arrangements; is that correct? A. This is the transaction that I presume he was referring to.

Q. You know that it was, don't you? A. I presume from what he said, yes.

Q. Can you tell me from Government's Exhibit 64 again what the fee from the brokerage house was to the bank? A. The brokerage house deducted $1.65 commission.

Mr. Hallinan: I should like to offer Government's Exhibit 64, but just this one page. So I am going to separate it from the remainder.

The Court: Can't you do it with a paper clip?

(1206) Mr. Hallinan: Pardon?

The Court: Can't you hold the rest of it together with a paper clip? Nobody will be looking at it.

Mr. Hallinan: We might scotch tape it.

Would your Honor want me to mark another exhibit number? I do not think it is necessary.

The Court: We will call the page 64-A. That is what he is offering, 64-A.

Mr. Hallinan: The Government offers 62, 63 and 64-A.

Mr. Rosenblum: I have no objection to the check.

(Government's Exhibit 62 for identification received in evidence.)

(1207) Mr. Hallinan: Well, I will ask a few more questions while he is doing that.

Q. I think you have testified, Mr. Miller, with respect to this check in this particular transaction we are on now that you countersigned the check the following day, is that correct? A. At a time subsequent to the day it was issued, yes.

Q. There were officers empowered to countersign checks in the bank at that time, were there not? A. I really don't recall.

Q. Let me ask you specific questions then. Was Mr. Reedy empowered to countersign this kind of a check? A. Yes.

Q. All right. During this period of time on the date this check was issued? A. Would you give me the date again?

James W. Miller—Defendant—Cross

Q. October 10. A. What year?
Q. October 10, 1950—1949.

Mr. Rosenblum: 1949.

A. Mr. Reedy was not stationed at the 48th Street office at that date.

(1208) Q. Was Mr. Gallagher at the 48th Street branch? A. Yes.

Q. Was Mr. Gallagher on October 10, 1949 empowered to countersign checks? A. No, sir.

Q. He was not? A. He was not.

Q. Was Mr. Vassil empowered to coutnersign checks on that date? A. In conjunction with my signature, yes.

Q. Was Vassil at the 48th Street branch at that time? A. Yes.

Q. Was Mr. Brennan empowered to countersign checks at that time? A. Only with my signature on the check.

Q. Only with your signature? A. Yes.

Mr. Hallinan: I should like to call the jury's attention to this—63—rather than circulate these two documents, your Honor.

Q. Just one further question, Mr. Miller. I see that your signature is above "Assistant Vice-President." Was that your title at that particular (1209) time? A. No. My title was president.

Q. Was there an assistant vice-president at the bank at that time? A. Yes. Mr. Vassil was assistant vice-president.

Q. I want you to look at this check again carefully and tell me: You just said that Vassil and Brennan were only empowered to countersign checks with your signature? A. That is correct. You can check that in the bank; anyone there that knows can tell you that.

Q. Have you finished? A. Yes.

Q. What does the printed notation say right under your name? A. Under my name it says assistant vice-president. That wasn't my title.

Q. What does it say under the other? A. Manager.

Q. Then from that printed form were the assistant vice-president and the manager empowered, apart from your signature, to sign and countersign a cashier's check? (1210) A. Not together, no.

Q. Would you say that this check was then made out incorrectly? A. No, it was not. It was made deliberately that way.

Q. With the "Assistant Vice-President" printed down below you mean? A. That is right.

Q. Why was that? A. Because he would sign where it says "Assistant Vice-President," I would sign on the other side. If the manager signed, then I would sign on the other side.

Q. You were president at this time? A. I think that has been established; yes.

Q. And your signature was required if Brennan signed it? A. Yes. I don't think Brennan had any authority to sign any checks at that time.

Q. I don't understand this. Where is the position for the signature of the president? A. This printing is to indicate when the manager or the assistant vice-president signed, the line that they are supposed to use. The line that they didn't (1211) use I used.

Q. In other words, those notations down below don't mean anything? A. Why, I just told you what they meant. They mean when the manager signs he signs on the line marked "Manager." When the assistant vice-president signs he signs on the line marked "Assistant Vice-President." I sign in the blank space.

Q. That is all I asked you before. Then an assistant

vice-president and a manager could sign and countersign a check like that without your signature on it? A. No, I have been telling you that they couldn't.

Q. I ask you again, the notations on that are incorrect? A. They are not incorrect, no.

Q. Did you have other checks with other notations on them? A. No, they are all printed this way, all in the 48th Street office.

Mr. Hallinan: Government's Exhibit 62 is a Pennsylvania Exchange Bank cashier's check in the amount of $5,035.22, signed by Mr. Miller and Mr. (1212) Littlefield, issued on October 10, 1949.

Government's Exhibit 63 is a card for the account of Daniel Robino indicating that the account began some time in 1937 and was closed on 1-5-39.

Q. Did you have any knowledge of this account at the bank, Mr. Miller? A. No, I don't recall that account.

Mr. Hallinan: May we have this marked, please?

(Marked Government's Exhibit 65 for identification.)

Q. Mr. Miller, besides being a follower of the opera, did you like art, paintings? A. Yes, I like art.

Q. Do you know very much about it? A. Very little.

Q. Did there come a time when you received a painting from Irving Mishel by Degas? A. There came a time when he came into the bank and wanted to make a loan on some pictures. I told him that we didn't make loans on pictures.

He sent over a painting anyhow, with a list of paintings, and asked if we wouldn't take it up. We didn't do anything because we don't lend on (1213) paintings. That was shortly before he got into trouble. And the painting

was left at the bank, where he sent it, and it is still there today.

Q. Have you seen it there recently? A. No.

Q. How do you know it is still there today? A. Because I asked the manager to look for it, and he found it up in the stockroom.

Q. Did you ever have it at home, Mr. Miller? A. No.

Q. Never? A. No.

Q. How many paintings were there? A. I only recall him sending one.

Q. Is Government's Exhibit 65 for identification a photograph of that painting? A. Well, I don't remember the painting. I am familiar with this picture, that is, I have seen this painting reproduced a number of times. But I couldn't say whether that was the painting he sent over or not. We can call up and ask them at the bank what the picture is. They know; it is there.

Q. Now you discussed yesterday the loans on March 2nd and March 9, 1950. Would you go over those (1214) briefly again for us, please? A. Those are the two loans that were made to the liquor store, I presume you mean?

Q. Yes, Mr. Miller, they are. A. There was a loan of $5,000 made to the liquor store, I think it was Mishel Wine & Liquor, on one date. About a week later, after the executive committee approved him for that $5,000, another loan was made to the liquor store.

Q. I think you testified that the first, having refreshed your recollection from looking over certain records, the first loan was made on March 2, 1950; is that correct? A. That is as near as I remember it, yes.

Q. Before we go any further, would you tell us the procedure for a loan of this type with specific reference to—withdrawn.

Was any corporation empowered to borrow money at your bank? A. What do you mean, any corporation?

Q. Well, it is not a very good question, I agree. Well, let us say the Mishel Wine & Liquor. Did they have to have a resolution on file to make a loan? (1215) A. When a corporation owns an account in a bank they file a resolution. The resolution is a combination authorizing signatures and authorizing the loan, so the initial resolution that they file empowers them to use the account to make loans.

Q. Was there a resolution in the bank when you granted the loan on March 2, 1950? A. There should have been. I couldn't tell you.

Q. Well, let us see if I can refresh your recollection. First of all, you have told us that you didn't know that Mishel had sold this Mishel Wine & Liquor Corporation, is that correct? A. Not until after the loans were made, yes.

(1216) Q. But when the loan was made you didn't know it? A. No.

Q. I show you Government's Exhibit 55—did you know his home address, by the way? A. I suppose it's in the records. I don't recall it.

Q. You don't recall it? A. No.

Q. Was it up on the Grand Concourse somewhere? Do you have that kind of recollection? A. Bronx.

Q. I show you Government's Exhibit 55 in evidence. Is there written in ink at the bottom "Closed" on a certain date? A. Yes.

Q. What date? A. 1-9-50.

Q. Is that the Mishel Wine & Liquor account? A. Mishel Wine & Liquor Corporation.

Q. I show you Government's Exhibit 54 in evidence and ask you to read the matter on the lower righthand corner. A. It says, "New cards and resolution filed (1217) 3-3-50."

Q. That is March 3, 1950, is it not? A. That's right.

Q. From looking at those cards, would that indicate that a resolution was not on file on March 2, 1950, when you granted the loan? A. Not necessarily, no. This card—he may have filed the resolution on March 2 and the card was made up the next day, and the girl that made up the card just put the date on it she made it up.

Q. Do you know that to be the fact? A. No, I don't. As a matter of fact, the resolution should have been on file. It is up to the loan tellers to check. It is not my personal responsibility to keep every little record in the bank.

Q. But you testified that you checked the various papers in granting this loan, did you not? A. No, I did not.

Q. What did you do in granting the $5000 loan immediately? A. I looked at the statement, talked to him and felt that from our experience with him he was entitled to the $5000 loan.

Q. You don't mean that, Mr. Miller, do you, (1218) from your experience with him? A. Yes.

Q. You knew from your experience with him he did not have any integrity at all, didn't you? A. I did not.

Q. Mishel was a fine, reliable business man as far as you are concerned; is that right? A. He was a good business man, yes.

Q. Will you look at I think it is 55. Was there an address on that for him? That was the one that was closed 1-9-50, as indicated on the card; is that right? A. Which number did you give me?

Q. I think it is 55. A. And what is it you want me to read from there?

Q. Is there typewritten in on the top an address? A. Yes; 2960 Third Avenue, New York, New York.

Q. Is there pencilled in above that another address? A. It was changed, I suppose, at some subsequent date. It says 930 Grand Concourse, Bronx.

(1219) Q. You know exactly when it was changed, don't you, Mr. Miller? A. I do not, no.

Q. You knew all along that Mishel didn't own this corporation when he got the loan, didn't you? A. I did not, Mr. Hallinan.

Mr. Hallinan: May we have this marked, please.

(Marked Government's Exhibit 66 for identification.)

Q. I show you Government's Exhibit 66 for identification. I ask you if you recognize this as coming from the bank? A. Yes.

Q. Do you recognize the handwriting on there? A. Yes. It is mine.

Q. That is an undated memo, isn't it, Mr. Miller? A. Undated memo, yes. If it is in its proper place in the file, we might determine the date.

Q. I will be patient with you, Mr. Miller. I won't move to strike that, but would you just answer my questions, please?

Mr. Rosenblum: I object to the statement (1220) by Mr. Hallinan, being patient with the witness.

The Court: I will let it stand.

Mr. Hallinan: The Government offers Government's Exhibit 66 in evidence.

(Mr. Hallinan hands document to Mr. Rosenblum.)

Mr. Hallinan: No objection?

Mr. Rosenblum: No.

(Government's Exhibit 66 for identification received in evidence.)

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Mr. Hallinan: May I read this to the jury, if your Honor please?

The Court: All right.

(Mr. Hallinan reads Government's Exhibit 66 to the jury.)

Q. Does that mean secretary-treasurer? A. Yes.

(Mr. Hallinan continues reading.)

Q. That is January 12, 1950, the 1-2-50 on there? A. Yes.

Mr. Rosenblum: 1-12.

Mr. Hallinan: I am sorry; 1-12-50, yes.

Q. You say some time thereafter you heard, you say, Mishel had sold this corporation and you called (122) him down to the bank; is that correct? A. That's correct.

Q. And you asked him to put up some security? A. Yes. I asked him to pay the loan first.

Q. Mr. Miller, isn't it a fact that you had the bank at about that time debts of Mishel's in the amount of about $30,000 that were not secured? A. I don't think so.

Q. What were they? A. Well, I would have to have the records to add it up, but I don't believe it was that figure at that time.

Q. You testified on direct that the high point of Mishel's indebtedness to the bank was about a little over $30,000, did you not? A. I did.

Q. When was that high point? A. That was, I believe, in the middle of 1949.

Q. How much had it been reduced by the time you granted these loans? A. I don't recall. Otherwise I could have told you the exact amount.

Q. Had it been reduced at all? A. I believe it had.

(1222) Q. And what is your belief as to how much it had been reduced? A. I would have to look at the credit file. I can't carry all those figures in my head.

Q. Was Mr. Mishel still indebted to the bank in some amount when you granted the loan on Mishel Wine & Liquor? A. Yes.

Q. Isn't it a fact that you asked Mishel to bring in some kind of securities and you weren't too concerned about what kind they were or where they came from because you had so many unsecured loans of his at the bank and the bank examiners were due shortly and you did not want the situation to look too bad? A. That is ridiculous, Mr. Hallinan.

Q. Mr. Miller, isn't it a fact that on April 28, 1950, the bank examiners did visit the Pennsylvania Exchange Bank? A. I couldn't remember the date. I would have to look at the files.

Q. How often would the bank examiners visit as a practice——

Mr. Hallinan: Withdrawn.

(1223) Q. Did they have a practice for visiting banks? A. Oh, yes.

Q. How often? A. Twice in every 18 months.

Q. And you don't recall that on April 28, 1950, the bank examiners did visit the Pennsylvania Exchange Bank; is that correct? A. What is the date now again?

Q. April 28, 1950. A. I don't believe they did, because they were in on November 2 of 1949. So that would be five months later you are speaking of. I don't recall any instance in the quarter of a century that I was there that they came in five months apart.

Q. Let me see if I can refresh your recollection on that. What about seven months? A. Seven months it could be. Twice in 18 months.

James W. Miller—Defendant—Cross

Q. Wasn't it a fact that the examiners came back again on October 20, 1950? A. It is possible. I can't remember the dates.

Q. Both those dates you could check from the records of the bank, couldn't you, to refresh your recollection? (1224) A. Yes.

Q. Didn't you testify that when you granted the loan you wanted 20 per cent of the loan in the account? A. No, I didn't testify——

Q. You tell us what you did say about the 20 per cent. A. I said it is customary for a depositor to keep 20 per cent of his loan as a balance.

Q. What do you mean for the customer to keep? For the bank to require him to keep that much? A. For the customer to keep a balance of 20 per cent of his loans, yes. That was a requirement.

Q. Of the bank? A. Of all banks.

Q. I know, Mr. Miller. I am just talking to you about the Pennsylvania Exchange Bank. A. Yes, it was a practice of ours.

Q. Let us get this clear. Do you understand I am only talking to you about the Pennsylvania Exchange Bank? A. Yes. I said it was a practice in our bank.

Q. Weren't you aware, Mr. Miller, that the balance in the Mishel Wine & Liquor account on (1225) December 27, 1949, was $4.92? A. In that particular account?

Q. Yes. A. No, it has never come to my attention.

Q. Weren't you aware at that time that on June 31, 1950, the balance in the account was $19.55? A. On what date, Mr. Hallinan?

Q. June 31, 1950. A. There is no June 31.

Q. I think you are right. It must be June 30.

On June 30, 1950, was there a balance of $19.55? A. I couldn't tell you about the balances, Mr. Hallinan, because the only information that I got on the balances of a customer who was making an application for a loan was

the balances that were posted in the credit file. They were usually about a month late, but I never went to the ledgers to find out what the customer's balance was. I took whatever figures were reflected in the credit file.

Q. Did you know that the records of the bank, Mr. Miller, reflected on February 27, 1950, there was a balance in the Mishel Wine & Liquor account of $17.35? (1226) A. No, I don't know that.

Q. Weren't you aware then and now, Mr. Miller, that on March 31, 1950, there was a balance in the Mishel Wine & Liquor account of $2.53? A. No, I was not aware of that.

Q. Mr. Miller, this testimony about 20 per cent being in the account——

Mr. Hallinan: Withdrawn.

Q. That 20 per cent rule didn't pertain to Mishel, did it? A. Yes, it applied to everybody, but the money didn't have to be in the one particular account. If a customer had five accounts, we would lump all the balances together and give him credit for his balances.

Q. Let us pursue that for a minute. You mean to tell me if a person had a corporate account in the bank you could look to another corporate account in that bank to satisfy loans out of the first corporate account? A. No, Mr. Hallinan.

Q. What do you mean? A. I mean that he would get credit against his 20 per cent for the other accounts that he maintained (1227) in the bank.

Q. You mean the 20 per cent would be drawn from all the accounts, not just one? A. We don't draw anything. We just use that as a figure.

Q. I know, as a basis? A. Yes.

Q. The 20 per cent, then, might represent money in five

accounts and not just the account that was getting the loan? A. That's correct.

Q. Now, that is what I ask you again. Why did you use that as a basis? Could you look to another corporate account to satisfy the loan of a distinct corporate loan? A. No. The 20 per cent balance requirement had nothing to do with looking for payment.

Q. What did it have to do with it? A. It was to give us a working balance on the account.

Q. For what purpose? A. So that we had some balance to make some money on.

Q. Now, I think yesterday, Mr. Miller, you (1228) testified that you called, as you have repeated it here today, Mishel into the bank when you found out, as you say, when you first found out, that the corporation had been sold and Mishel was no longer the owner; is that right? A. Yes.

Q. Now I read from the record at page 1119, in the middle. This is part of an answer that you gave.

"I said that didn't satisfy me. I said, 'You had no right to come in here and say you owned the store and give us a financial statement and make a loan when you didn't even own the store.'"

At that point you were aware, as you say now, that a gross fraud had been perpetrated upon your bank, weren't you? A. Yes.

(1229) Q. Why didn't you go down to the District Attorney then? A. Because he immediately agreed to put up collateral to cover the loan.

Q. Does that detract from the fraud perpetrated upon the bank, Mr. Miller? A. He said it wasn't a fraud. He gave an explanation which at the time seemed to be reasonable and fitted in with the general idea that I had as to how the State Liquor Authority transferred package store licenses.

Q. The explanation you now say seemed reasonable to you? A. Yes.

Q. I once again read to you your answer from yesterday, Mr. Miller: "I said that didn't satisfy me"— A. Yes.

Q. —"I said, 'You had no right to come in here and say you owned the store and give us a financial statement and make a loan when you didn't even own the store.'"

Which do you mean, Mr. Miller? Did it satisfy you or didn't it satisfy you? (1230) A. It didn't satisfy me, no.

Q. There is no doubt in your mind, either today or then, is there, Mr. Miller, that a gross fraud had been perpetrated on the bank? A. Well, I certainly know it now.

Q. Didn't you know it then? Didn't you say so to Mr. Mishel, as you claimed for the first time, when you became aware of it? A. Yes, I did.

Q. Why didn't you go down to the District Attorney then, Mr. Miller? A. Because he gave an explanation and backed it up with collateral.

Q. Isn't the reason the same as I asked you yesterday, Mr. Miller, because you didn't want to go near the District Attorney with anything about Mishel yourself personally? A. No, that isn't so.

Q. That is absurd, isn't it? A. It certainly is.

Q. Did there come a time when Mr. Mishel, I think you said, brought in a hypothecation agreement? A. Yes.

Q. When he brought it in you were fully aware, (1231) were you not, of what I have just asked you twice, of this gross fraud that had been perpetrated upon the Pennsylvania Exchange Bank? You hadn't forgotten? You were fully aware of it, weren't you, when he brought in the hypothecation agreement? A. Yes, I knew of it.

Q. I show you Government's Exhibit 67 for identification and ask you if this is a copy of that hypothecation

agreement? A. I couldn't tell you. I thought it had been made on our own form.

Q. Does that refresh your recollection? A. No, it does not. But——

Q. Is that a copy of that agreement? A. I don't recall it. I know we got a hypothecation agreement. I thought, though, my memory would be that it would be on our own form. We had printed forms.

Q. Did you go through the records of the bank to see if you could find the original of the hypothecation agreement? A. No.

Q. Does that look like a copy of it? A. I don't recall it, Mr. Hallinan. It could (1232) be.

Q. You don't recall whether that is a copy or not? A. No, I don't.

Mr. Rosenblum: May I see what you showed the witness?

(Mr. Hallinan hands to Mr. Rosenblum.)

Mr. Rosenblum: Thank you.

The Court: I think we will take a brief recess now.

(Short recess.)

Q. Mr. Miller, I think you testified that the committee or the board of directors—or, was it a committee or was it a board of directors that approved the second loan on March 9, 1950? A. Executive committee.

Q. Executive committee. Now, wasn't it a fact that the executive committee was nothing but a rubber stamp for you and Mr. Gallagher? A. No, it was not a fact.

Q. Did the executive committee keep any records, Mr. Miller? A. Yes.

Q. What kind of records? (1233) A. There were minutes of the executive committee meetings.

Q. Did you ever see those? A. Yes.

Q. Are they at the bank now? A. They should be.

Q. Have you seen them recently? A. No, I haven't.

Q. When is the last time you saw them? A. Oh, I would say March 1954. I actually didn't look—never looked at them. They were read at the meetings, so I didn't have to look at the books.

Q. You never actually saw the books then? A. I saw the books were there, but I never took the books and looked through them. The secretary read the minutes out of books.

Q. Now, yesterday you testified that—let me read the question and answer.

Mr. Rosenblum: What page?

Mr. Hallinan: I am sorry. 1099. The second question on the page.

Q. "Was there any occasion when you did procure tickets from him or through him?"

Parenthetically, that is referring to Mishel.

(1234) "A. There was one occasion where one of the directors of the bank called me up one afternoon and wanted to get two tickets for that night for South Pacific, and he said he had to have them, it didn't matter what they cost. So I asked the boys on the platform if they knew anybody who could get two tickets in a hurry. One of the clerks said that Mishel could get tickets, and I told him to get a couple of tickets from him. He got the tickets and paid him for them."

Now, who was the director that called you up? A. Lionel Goldberg.

Q. And how long was he a director? A. A number of years. I can't recall.

Q. And who was the clerk that you spoke with about these tickets? A. I don't recall.

Q. By clerks you include in that tellers? A. No, I used the word interchangeably. Boys on the platform and clerks.

Q. You can't recall who that clerk was? A. No, I can't.

Q. Did Mishel come down personally with the tickets? (1235) A. No; there really were no tickets involved. At that time you didn't get any tickets. You simply got a notice that two tickets were at the box office in a certain name. And I simply told Mr. Goldberg to go to the theatre that the boys told me and ask for the tickets in that name.

Q. Who paid Mishel for the tickets? A. Mr. Goldberg sent the money over. I suppose whoever made the arrangement with Mishel.

Q. You used to get tickets from time to time from Mishel, didn't you, theatre tickets? A. I don't recall any, no.

Q. Would you say you didn't? A. I would say I didn't. I don't recall any.

Q. Now will you tell us briefly, Mr. Miller, what you would do when a known customer would come into the bank to you and want to cash a bond not in his name, step by step, the procedure that you would follow? A. A known customer?

Q. Yes. A. Would come in to me and ask to have a bond cashed? I could have done one of several things. If he was a good customer I would send the bond over (1236) and have it cashed.

Q. Send it over by whom? A. The guard, whoever happened to be on the floor.

(Mr. Rosenblum conferred with Mr. Hallinan off the record.)

Q. Do you understand the question? I am talking about a person bringing in a bond to be cashed not in his name. A. Oh, no.

Q. All right. A. No. I thought you meant that the bond was in his name.

Q. No, it is in a name other than his. A. No.

Q. All right. Where he came to you directly what would you do in a situation like that? A. I would tell him that he has to have the person who is named in the bond, that he must bring them there.

Q. Do you recall cashing the bond for Irving Mishel's wife? A. I don't recall the instance, but I see in the record that there was such a transaction.

Q. Do you recall whether Mrs. Mishel was there (1237) at the time? A. I don't recall, no.

Q. Well, if she weren't, would you have cashed the bond for Mishel? A. I might have.

Q. And have you given us all the steps that you would follow? A. Well, as I can recall them at the moment, yes.

Q. Would you do anything with respect to a bond redemption form? A. No.

Q. I show you Government's Exhibit 32 in evidence and ask you if that is the bond redemption form for a bond in the name of Helen Mishel with your signature above "Identification"? A. Yes, it is.

Q. Did you follow an extraordinary procedure in this particular case? A. No, I don't think I had any set procedure.

Q. You had no set procedure at all? A. No.

Q. Sometimes you would sign and sometimes you would not? (1238) A. Yes, I would say so.

Q. Well, when a person came to you and you would send the bond over with the guard, what would you say to the guard? A. "Take care of this."

Q. And what would you mean by "this"? A. For him to take care of it.

Q. Would you give him the bond? A. Yes.

Q. Would you give him the bond redemption form? A. Yes. Whatever I got I gave to him.

Q. Would you sign the bond redemption form or initial it? A. In this case I signed it, yes.

Q. Would you usually? A. I really couldn't say. I don't—as I say, I had no set procedure.

Q. Why would you sign it in some cases? A. No particular reason.

Q. Just for the exercise of penmanship? A. A good reason.

Q. Are you serious, Mr. Miller, that you would initial it sometimes and not other times in the circumstances I have outlined to you, just at your own whim? (1239) A. Yes. I don't know about whim, but——

Q. If it isn't a whim, give me the reason. A. Because we had no set procedure.

Q. You didn't have much of a set procedure for anything at the bank, did you, Mr. Miller? A. I wouldn't say that, no.

Q. You can't give me a reason why you would have signed that? A. No, I don't recall the incident.

Q. Would you give me a reason why you signed the redemption form when you did? A. No. Maybe to facilitate the transaction.

(1240) Q. Now, directing your attention to the Chernoff bonds, I want you to tell the Court and jury exactly what you remember, everything that you remember as exactly as you can remember it, about the cashing of those bonds, not as you told it later to Sershen but what you just recall now about those events. A. There was an occasion when Mr. Mishel came to my desk with another man and said his friend wanted to cash some bonds, and I asked him who the friend was.

These words I am giving you, I don't want you to understand those are the exact words. I am giving you the idea or the meaning that took place at that time.

He told me that the man worked for—he said he was an oldtimer over in Roth's Restaurant. I asked the man

if these were his bonds and if this was him, pointing to the bonds. He said, "Yes."

I sent them over by the guard and they were cashed.

Q. Did you send over a redemption form? A. Whatever he gave me I sent over.

Q. Wasn't it a standard procedure for a bond redemption form to accompany the bond or bonds? (1241) A. Yes, if the teller, when he got them, there was no redemption form, he would have said something about it, so I assume a redemption form went over.

Q. Do you recall on this occasion the bonds came back? A. No.

Q. So was there a redemption form with them? A. I say I don't recall that the bonds came back, no.

Q. Were the bonds signed in your presence? A. No, they were, I believe, already signed when the man came to me.

Q. Shouldn't the bond ordinarily be signed in your presence? A. No.

Q. Was the bond redemption form signed in your presence? A. I don't recall the form at all.

Q. Did you initial that redemption form? A. No, I don't recall the form at all.

Q. You don't recall anything about a redemption form? A. No. There must have been one there, but I (1242) don't recall it.

Q. You only recall one occasion? A. Clearly, as clearly as I have described, which is not too clear, but it was in another time, yes.

Q. Let us get into the area, then, that is not too clear. Tell us what you remember about that. A. He was in another time.

Q. That is fine. Now you just tell us everything you remember about that. A. I just know he was in another time. I don't know whether it was the time he had this bond that you just showed me or whether it was some other instance.

Q. The bond I what? A. Just showed me.

Q. The Helen Mishel redemption form? A. Yes.

Q. That is all you can remember about that, you don't know whether it had to do with Chernoff bonds or the Helen Mishel bond or possibly some other bond? A. It could have been, yes.

Q. Now, did it refresh your recollection at all—first of all, you heard the tellers testify in this case, didn't you? A. Yes.

(1243) Q. Miss Graef? A. Yes.

Q. Mr. Horan? A. Yes.

Q. Mr. Lucey? A. Yes.

Q. They testified that the bonds were brought over by Mr. Kennedy while Mr. Mishel was at your desk.

Does that refresh your recollection at all as to other occasions he might have been in? A. No, it really didn't.

Q. It didn't help a bit? A. I don't say it didn't help a bit. I say it just didn't refresh my recollection.

Q. So out of the eight, all you say now is that you recall one transaction? A. Yes.

Q. What did the man look like who was in with Mr. Mishel? A. He was medium height, stocky, dark hair, I would say more on the dark complexion side.

Q. Did this man say anything to you? A. He said very little. He acknowledged that he was the man that was named in the bonds and they (1244) were his bonds.

Q. How old a man was he? A. I would say between 35 and 45.

Q. Did you ever see him in the bank before that time? A. No.

Q. Did you ever see him in the bank after that time? A. No.

Q. Did you ever see him anywhere before or after that time? A. No.

Q. You have seen him once in your life? A. Up till what date?

Q. I am talking about seeing him personally at any other time in or out of the bank except on the occasion which you have just testified about. A. I saw him in Mr. Rosenberg's office a week ago.

Q. A week ago? A. Yes.

Q. Apart from that? A. No.

Q. How long was he with you on that day when (1245) the bonds were cashed? A. Very short time.

Q. How long is a short time? A. It could have been a minute, two minutes, maybe even less.

Q. You have testified that there came a time on July 19 or you received a letter dated July 19, 1950, from the Treasury Department with those schedules attached; is that correct? A. Yes, and with the photographs of some of the bonds.

Q. You said that yesterday. I want to know what do you mean by "some of the bonds"? A. Just what I say. What else do you want me to say?

Q. I don't want you to say anything, Mr. Miller, but the truth, the absolute truth. That is all I want you to say.

What do you mean by "some of the bonds"? A. Not all of the 59 bonds.

Q. That is what you meant? A. That is exactly what I meant.

Q. Will you read the letter, please, where it refers to the photographs of the bonds? (1246) A. It says:

> "Photographs of bonds, one or more for each date of payment, are enclosed to assist you in item 2 above."

Q. How many bonds are listed in the schedules with the dates? I can save you some time. There are 59 bonds. A. We have talked about the number here many times. I haven't counted this, but I would say it is 59.

Q. You have a distinct recollection that all of the bonds listed in those two schedules were not attached with the Treasury Department letter; is that correct? A. No, I don't have a distinct recollection of that.

Q. Then, were all the bonds there? A. No, they couldn't have been.

Q. Why not? A. Because when we finally turned this over to the bonding company, we sent everything that had been received with this letter, a photostatic copy of, I think, these schedules and the letter, and the photographs that we had originally received, and there were (1247) 13 photographs which we sent to the bonding company. So that is the original bunch, as far as I know, that were received originally. They were kept intact, so I would say that is what we got originally.

Q. You recall that you got 13 bonds originally? A. No, I didn't say that.

Q. From checking these records you now know it from the records? A. I know that when the matter was turned over to the bonding company for the final payment there were 13 of them.

Q. Is this in a letter somewhere? A. Yes.

Q. Didn't you have all the bonds, Mr. Miller? A. No, I don't think so.

Q. Is there any reason why you would not want to turn over all the bonds at that particular time? A. At what particular time?

Q. The particular time you have just mentioned, to the bonding company. A. We turned over all we had.

Q. I ask you, is there any particular reason why, if you had all 59 bonds, you would not want to turn over all 59 bonds to the bonding company? (1248) A. We didn't have 59.

Q. You testified yesterday that some time after you received this letter you turned over that letter and the

schedules to Mr. Wilmot for him to make an investigation; is that correct? A. And the photographs, yes.

Q. Did you hear Mr. Wilmot testify? A. Yes.

Q. He testified he did not get anything but the letter and the schedules. A. I heard him say that. I think he was mistaken.

Q. What was on the 13 bonds that you turned over? A. I don't quite get the question, what was on them.

Q. You are familiar, are you not, with the procedure at the Pennsylvania Exchange Bank for a teller's name to be on the bond when the teller has something to do with the cashing of the bond, either his or her initial or name? A. Not too familiar, no.

Q. Do you seriously mean that, that you are not too familiar? A. Yes. There are hundreds of little things that went on in the bank that I didn't know the exact (1249) physical or mechanical procedure that was involved.

Q. You were very clear on the procedure with respect to the duties of the tellers in cashing certain bonds, weren't you, Mr. Miller? A. Yes.

Q. You are very clear on that? A. Yes. It is an entirely different matter.

Q. Did you look at the bonds before you turned them over to Mr. Wilmot? A. I would say no. I probably glanced at them.

Q. What did you see at a glance? A. That they were photographs of bonds.

Q. Did you see any names of the tellers on? A. No.

Q. Then he reported back to you some time that—a short time thereafter—let me read your answer on page 1050.

"A. 1950. When I received this I turned it over to the head teller, Mr. Wilmot, and told him to check into it. He reported back I don't remember whether it was the same day or a few days later, but he reported back that he wasn't able to get any information from anybody in

the bank or the records that would indicate how these were cashed."

(1250) Did you ask him with whom he had spoken? A. No, I did not.

Q. Did you ask him what records he had checked? A. No, I did not.

Q. What did he return to you when he finished his investigation? A. Well, it looked like everything that I had handed to him.

Q. What did you do with the letter, the schedules and the bonds thereafter? A. I suppose I put them in a folder.

Q. Were you concerned about this matter? A. Not particularly, no.

Q. You said yesterday that you did not do anything further with respect to this because the letter informed you that the Secret Service agents would be in; is that correct? A. That's correct.

Q. Would you read that middle paragraph for us again of that letter? A. No. 2?

Q. Yes, 2. A. "That you assemble all known information concerning the payment for presentation to the Secret (1251) Service agent who will call at your bank in connection with the investigation of the case; and".

Q. Weren't you aware from reading that when you received it that they wanted you to gather all known information? A. Me personally?

Q. You or somebody on your behalf for you, Mr. Miller. A. Yes. That is the reason I turned it over to Mr. Wilmot.

Q. Your bank was a paying agent for these United States savings bonds, wasn't it? A. We cashed bonds, yes.

Q. Were you a paying agent for the Treasury Department for paying these bonds? A. I never looked into that phase of it.

James W. Miller—Defendant—Cross

Q. Mr. Heffelfinger testified in your discussion with him you told him you didn't see why the Treasury Department was being so harsh because you got a very small fee for doing this. A. That's right.

Q. Did you get a fee from the Treasury Department for handling these? (1252) A. We got a fee, I think, of 15 cents a bond.

Q. Were you paying agents for the Treasury Department on these bonds, Mr. Miller? A. I say I never looked into that phase of it.

Q. What did you think you were getting a fee for? A. For cashing the bonds.

Q. And you did not know you were a paying agent for the Treasury Department on these bonds? A. I said I didn't look into that phase of it. This thing was nothing that came under my review.

Q. Mr. Heffelfinger testified—I forget exactly what he referred to, something in the amount of three million dollars that the Treasury Department had.

Do you remember what that was? A. I remember very well.

Q. What was it? A. He said that the Government had three million dollars on deposit in our bank, which was absolutely untrue. The quarter of a century I was there, I never recall there was any three million dollars at any time. The amount we had on deposit when he was there was $560,000. So he couldn't have told me that, (1253) or I would have corrected him immediately.

Q. What was the figure you want to give us? A. $560,000.

Q. Would you say that figure was true? A. That is what they tell me in the bank, so I don't see any reason they should give me a figure that is not true and not taken from the records of the bank.

Q. Was that true at the time you spoke with Mr. Heffelfinger? A. It must have been. That is the date.

Q. Was it true when you first got this letter from the Treasury Department? A. Oh, I couldn't tell you that.

Q. But you were not very concerned about this matter, is that correct? A. I wasn't upset about it, no.

Q. You were not upset about it, were you, Mr. Miller, because you were going to wait for a little time because you knew exactly what the situation was with respect to these bonds, didn't you? A. That is not so.

Q. Mr. Sershen testified that he came into the bank to see you on August 9, October 6 and October 10, (1254) and you say that he only came in twice; is that correct? A. Yes.

Q. Could he have come in another time and spoken with you, a third time? A. I don't think so, no, not on the dates that he mentioned.

Q. You are quite clear on that? A. That is certainly the best of my recollection, yes.

Q. You heard Mr. Sershen's and Mr. Sweeney's version of what took place on October 10 during that conversation, did you not? A. Yes.

Q. And your version is, in substance, that they first of all came to your desk, and Mr. Sershen had a picture, a small picture, and that it was described by you as about the size of a passport picture? A. Yes.

Q. How big is that, Mr. Miller? A. Do you want it in inches or what?

Q. Yes. A. Well, I didn't measure the picture. It just looked to me about the size of a passport picture.

(1255) Q. That is what I want to get. How big is a passport picture? A. Maybe 2 x 2, 2½ x 2. It could have been a little smaller, a little larger.

Q. Was it one picture or two pictures? A. Just one picture.

Q. By "two" I mean it might be a part of the same picture but one a profile and one a front view. A. No, it was not that type of picture. I know what you refer to.

Q. It was just one picture? A. It was just a picture.

Q. Mr. Sershen testified that you told him, and Mr. Sweeney testified to the same thing, that you never got a description of this man because he was off at the front of the bank.

Didn't you say that to Mr. Sershen and Mr. Sweeney? A. No, I did not.

Q. Did you give the same description to Mr. Sershen and Mr. Sweeney that you gave to us here today from this witness stand a little earlier? A. As near as I can remember, yes.

Q. And you say that in response to that Mr. (1256) Sershen or Mr. Sweeney said, "That's not a very good description"? A. Words to that effect, yes.

Q. Was there anything said in the conversation about Thomas Young? A. Not to me, no.

Q. Mr. Sershen or Mr. Sweeney said not a single word to you about Thomas Young? A. No. Mr. Sweeney said nothing, as far as I can remember.

Q. As a matter of fact, you told us yesterday you couldn't even remember Sweeney being there, you wouldn't say one way or another, but you didn't remember? A. That's right.

Q. Mr. Sershen testified, and Mr. Sweeney did, too, that you had on your desk at that time the bond redemption forms. Do you recall that? A. No, I believe he had a number of papers there, but what they were, I didn't go through them.

Q. Who is "he"? A. Mr. Sershen.

Q. Mr. Sershen says that you had them there, the original redemption forms. Do you recall that? (1257) A. No, no. I thought he said he had photostats that one of the clerks had obtained for him.

Q. He said he had obtained those earlier, but he said that you had on your desk the original redemption forms

on October 10. Do you recall that you did? A. No, I don't recall.

Q. Did Mr. Sershen have photostatic copies of all 59 bonds at that time? A. He could have. I didn't count them. I had my own set that had been mailed in.

Q. That had been mailed in? A. Yes.

Q. When was that? A. With this letter. July 19.

Q. You had your own set of 59 bonds? A. No, no; just the 13 that came with the letter.

Q. Did Mr. Sershen have more bonds than you did? A. He could have. I didn't count them. I didn't look at his bonds.

Q. And you cannot recall whether you had the redemption forms or not? A. No. If so, we didn't do anything with them.

Q. And you are quite clear that you did not (1258) discuss Thomas Young? A. No.

Q. You testified that you asked Mr. Sershen what the situation was with respect to the bank; is that correct? A. That's correct.

Q. What did he say to you? A. He said that the bank would not be called on to make any reimbursement because we had gotten identification according to regulations.

Q. And you also said that Sershen told you that Mishel had admitted that this was his job? A. Yes, he did.

Q. Did you hear Sershen and Sweeney testify that Mishel made no statement of any kind to either of them? A. Yes, I heard them say that.

Q. Now, did you say anything else to Sershen on October 10? A. I don't recall anything else in particular, no.

Q. What did you say about Mishel? A. I said that he was a man who had formerly been a depositor in the bank and had turned crook, words to that effect.

(1259) Q. And you knew, as you claim, by this time at least about the Alpren stock being stolen stock, the fraud

that had been perpetrated, you say, without your knowledge by Mishel upon your bank; those two things you knew by the time you had the conversation with Sershen on October 10; right? A. Yes.

Q. And at that time you say you for the first time connected Mishel to the Chernoff bonds? A. Yes.

Q. Now, did you feel that that was good news from Mr. Sershen, that the bank was in the clear? A. Well, I thought that is the way it should be, yes.

Q. You felt that was only natural? A. That's right.

Q. Did you make any kind of a notation for the file to that effect? A. No.

Q. You made a notation about Heffelfinger being into the bank, didn't you? A. Yes.

(1260) Q. I show you Defendant's Exhibit AI for identification and ask you if that is that memo to the file? A. Yes.

Mr. Hallinan: The Government will offer this in evidence.

Mr. Rosenblum: No objection.

Q. Why didn't you make a memo to the file when Mr. Sershen gave you the good news?

(Defendant's Exhibit AI for identification received in evidence as Government's Exhibit 68.)

A. Sometimes you make a memo, sometimes we don't.

Q. Once again, there is no set procedure for it, Mr. Miller? A. No.

Q. You're answering that "No," there is no set procedure? A. There is no set procedure, that is right.

Q. The best reason in the world for not making any memo like that would be that it never happened, wouldn't it, Mr. Miller?

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Mr. Rosenblum: I object to the form of the question.

(1261) The Court: Sustained.

Q. Once you knew, as you say again, for the first time that Mishel had perpetrated a fraud upon the bank and that the Alpren stock put up as security for his loan was stolen securities and after you had discussed the case with Sershen on the 10th, did you thereafter make any effort to review the facts of the cashing of the Chernoff bonds in the light of the knowledge you then had? A. No.

Q. Now between December 29, 1949 and June 4, 1952, did you discuss with James Lucey the cashing of the Chernoff bonds? A. Well, he said when he was here that he came to my desk once. I don't recall it.

Q. He said that you called him over, didn't he? A. That is what he said, yes.

Q. And that was the same day, he said, that Sershen had spoken to him, spoken to you and left the bank and then he said you called him over? A. Yes, that is what he said.

Q. Do you recall that? A. No, I don't.

Q. Do you recall, then, within the period of time (1262) outlined in my question, December 29, 1949 to June 4, 1952, ever discussing the cashing of the Chernoff bonds with Lucey? A. No, I really don't.

Q. Do you recall discussing them in the same period of time with Horan? A. No, I don't. Horan didn't work there. Horan didn't work in the bank. I wouldn't have any opportunity——

Q. I am just asking you if you did. I don't care whether you discussed it in or out of the bank. A. No, I didn't discuss it.

Q. On the roof of the bank, anywhere. A. No, I didn't discuss it.

Q. It is all inclusive. I ask you the same question with respect to Miss Graef for the same period of time. Did you discuss it with her? A. No.

Q. Did you look at during the same period of time the bond redemption forms in the bank? A. I don't recall ever going through them.

Q. In the same period of time did you ever look at the bond register? A. No, no.

(1263) Mr. Hallinan: Is your Honor going to adjourn at 4.30?

The Court: 4.30, if that is all right. Is this a good place to stop?

Mr. Hallinan: Yes.

The Court: All right. Have we got all the exhibits?

Mr. Hallinan: From the jury you mean?

The Court: Yes. The jury can go now. We will take a recess until 10.30 tomorrow morning. Don't discuss the case.

(Adjourned to October 31, 1956, at 10.30 a. m.)

New York, October 31, 1956;
10.30 o'clock a. m.

(1264)

Trial resumed.

(The following proceedings were had in open court in the absence of the jury.)

Mr. Hallinan: Before the jury comes in: I think Mr. Rosenblum has an objection to this. But I have a lawyer down here from the firm of Dorff & Levy and I want to get in my documentary evidence

on this examination before trial, but it is further complicated by this: I am going to show this examination before trial, the copy that Mr. Weiss has is going to be produced for us and signed by Mr. Miller, and I want to show it to Mr. Miller. Now, if Mr. Weiss is put off until the end of the trial I don't know that I can recall Mr. Miller for that purpose. And Mr. Weiss have several personal problems.

The Court: The objection is to the interruption of Mr. Miller's testimony.

Mr. Hallinan: Yes.

Mr. Rosenblum: No, it isn't the interruption. It is a question of whether or not rebuttal should come (1265) in during the defense.

Mr. Hallinan: I don't know——

Mr. Rosenblum: It is a pretty strict rule that is applied.

Mr. Perry: Mr. Hallinan took the position from the start that he insisted—I say "insisted" loosely, Judge; you are in control of the court—but it was his position that he didn't want his order of proof interrupted. We don't want ours interrupted either. We have it mapped out as we planned.

Mr. Rosenblum: If it was part of the defense, of course, we wouldn't stand on a technicality. But he wants to take a witness in rebuttal. And the rebuttal witness must follow after the defense is completed.

Mr. Hallinan: I don't know if, technically, that is rebuttal. I have been examining Mr. Miller——

Mr. Rosenblum: How can you call any witness during the defense? I don't care who he is or what he is.

Mr. Hallinan: I am just asking the Court. If the Court does not want to allow it, I can't do anything about it.

The Court: I would tentatively conclude (1266) with Mr. Rosenblum and Mr. Perry that it is rebuttal. What I would like to do, if it really won't prejudice anybody, I don't think there is any problem, at least I doubt that there is any problem of recalling Mr. Miller should you want to do so, but my only question is, if you have got Mr. Weiss here, another lawyer, who is going to testify for a few minutes apparently, maybe we might——

Mr. Rosenblum: You know what happens when you get into a matter of a few minutes. But he said he can be here in 15 or 20 minutes.

Mr. Hallinan: But he has personal problems today.

Mr. Rosenblum: If you telephone him he can get here in 15 or 20 minutes.

The Court: I don't think it makes any great difference to the parties. I mean, do you think it would prejudice your case?

Mr. Rosenblum: It may; I don't know. I was told by Mr. Hallinan that there was something else that he wants to bring up.

The Court: No. I would only take it on this examination.

Mr. Hallinan: That is all.

(1267) The Court: I think if we were starting from scratch and that Mr. Weiss were not here I would say bring him down at the regular time, don't bring him down now, we will finish with the defense, and then if you want to recall Mr. Miller I think I would probably let you, but I would hear both counsel on that if for any reason you shouldn't.

I think once he has opened himself up for examination it is within my discretion. If there is something you wanted for that examination, or you needed a document that you couldn't get and we had to wait a week to get it from California or something, that I could let your cross stay open until you get it. But inasmuch as Mr. Weiss is here, and it looks to me like this is going to be relatively short and probably non-controversial, I would like to take the examination and let him go, but if you have- —

(1268) Mr. Rosenblum: I think plus another fact. I was willing to make another adjustment that Mr. Hallinan did not want. I said I will give you an answer if you want to and I may stipulate so we can save Mr. Weiss the trip down that if the stenographer were called he would say the following questions were put, the following answers were made. He said he does not want that.

Mr. Hallinan: I won't agree to that. We are going further. We want to show that Mr. Miller reviewed this, made corrections and signed it. If you will stipulate to that, that will serve the purpose.

Mr. Rosenblum: You throw these things at me here. I have a duty here. I don't like to get these things thrown at me. I like to cooperate.

The Court: If we are going to go into that, I will let Mr. Weiss come down. I think it proper, if he is in a sense going to contradict Mr. Miller on something, he should come in as a rebuttal witness. If it is to lay the technical proof or something you are going to ask Mr. Miller about, I would consider taking him now, but if he is going to contradict or get into anything that is going to suggest

contradiction, (1269) I do not think it is proper.

Mr. Hallinan: He is going to testify to the examination before trial.

The Court: You are going into corrections. I do not think it is proper to have that come into the middle of Mr. Miller's testimony.

Mr. Hallinan: Would you instruct Mr. Weiss to be available by phone call today?

The Court: Mr. Weiss, would you be able to come down on phone call in the next two days?

Mr. Weiss: Yes, your Honor.

The Court: I am very sorry, but I do not think it is fair to the defendant to put you on now.

Mr. Weiss: May I have this courtesy: May I be excused today at least? This happens to be a bad day for me at the office, and from tomorrow on I would be available.

The Court: All right. Is there a chance that both sides would be ready to rest otherwise today?

Mr. Hallinan: I think there is a chance. I honestly don't know.

The Court: Mr. Weiss, let me put it this way: If the case would otherwise continue until tomorrow, I will do that. Otherwise, we may have to ask you to (1270) come down because we are running loose to the end of the term and I would not want to carry the case over just because of that. It may be unfair to the jurors, the parties and everybody else.

Mr. Weiss: If I am out of my office, I will be in touch with my office for a phone call.

The Court: I appreciate it very much.

Are we all through now? Can we get the jury in?

Mr. Hallinan: Yes, your Honor.

(Jury enters courtroom.)

The Court: We are all here, I see. I am sorry

to hold you up this morning. I did not think we would be as long as we were. I am always sorry to have you waiting out there in the juryroom. I could not anticipate it this morning.

JAMES W. MILLER resumed.

Cross examination continued by Mr. Hallinan:

Q. Mr. Miller, I think yesterday you referred to a letter that you sent to Toplis & Harding? A. Mr. Hallinan, before we start could I correct an answer that I gave to a question yesterday?

Q. Yes, certainly. (1271) A. Yesterday you asked me about a painting by Degas Mr. Mishel was supposed to have given to me or sent to the bank at the time he applied for a loan on pictures. You showed me a photograph of a picture and asked me if I had seen that painting and so forth, and I think I said I didn't recall, I didn't remember, I didn't think it was the picture. Last night I checked up in the catalog which I have at home, which is issued by the United Nations, which shows that that painting hangs in the Louvre in Paris. So it couldn't have been in his possession, it couldn't have been given to me and could never have been shown to me.

Q. A copy of that? A. A copy of what?

Q. Of that painting. A. I thought you said it was a painting by Degas.

Q. I asked you a question about what you knew about it. Was there a copy shown to you? A. No.

Q. Then when you testified you were talking about some other painting? A. No, I thought you were talking about the original painting by Degas. You showed me the picture (1272) of the picture Dancer on the Stage, I believe it was.

Q. I just asked you what did you mean when you testified yesterday there was some painting at the bank, and as far as you knew it was still there? A. Yes, it's still there.

Q. What painting is that? A. I don't know. I don't think it was this painting.

Q. I show you Defendant's Exhibit P and ask you if this is the letter that you referred to yesterday? A. This is a copy of the letter that we sent to Toplis & Harding on August 8, 1952. That is the letter I was referring to.

Mr. Hallinan: May I have this marked, please, our exhibit.

(Defendant's Exhibit P for identification marked Government's Exhibit 69 for identification.)

Mr. Hallinan: I will offer this in evidence.

Mr. Rosenblum: I have no objection, your Honor.

The Court: Received.

(1273) Government's Exhibit 69 for identification received in evidence.)

Q. Mr. Miller, I show you Government's Exhibit 69 and also 20-A and 20-B, and I ask you if you can tell us by comparing the two if the group of bonds listed in the letter of August 8, which is Government's Exhibit 69, to Toplis & Harding, has at least one bond for each date on which the bonds were cashed as reflected in 20-A and 20-B? A. The Government's letter said it did. Do you want me to check out all these numbers?

Q. Do you have any doubt that it did? Maybe we can save the time and not have you compare it. Do you have any doubt that with the letter of July 19 you had

available to you at that time at least one bond for each of the eight separate transactions at the bank? If you have any doubt about that— A. The letter recited that, and I have no doubt about it.

Q. I show you Government's Exhibits 22, 23 and 24. These are the three letters referred to in the separate counts of the indictment.

With respect to 22, I direct your attention to the second paragraph, the first sentence, which I (1274) will read:

"At the time the investigation was made by your department, we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

I ask you, what was the basis for your making that statement in that letter? A. Because that is what Mr. Sershen told me when he was in the bank the last time I saw him there.

Q. Did anything else constitute part of the basis for making that statement? A. No.

Q. I direct your attention to Government's Exhibit 23, the letter of April 4, 1952. I direct your attention to the second paragraph. I am going to read one sentence to you:

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of paragraph 4 of the Treasury Department circular covering such redemptions dated December 19, 1947."

(1275) Now I ask you, when you made that statement in that letter, what was the basis for making that statement? A. All of the circumstances which had preceded it.

James W. Miller—Defendant—Cross

Q. What circumstances did you rely upon when you made that statement? A. I relied on the statement of Mr. Sershen, and I felt in reading paragraph 4, which requires a stranger to be identified by a customer of the bank, I thought that fitted.

Q. You were relying on, No. 1, the statement by Mr. Sershen? A. Yes.

Q. And No. 2, you said you read the circular and thought that fitted the circumstances.

What circumstances are you talking about? What you told us happened when you cashed the bonds?

Mr. Rosenblum: I object to the form of the question. May the witness be permitted to answer the question?

The Court: I think he can lead.

Mr. Hallinan: I will withdraw the question.

Q. What were you relying on outside of Sershen's (1276) statement when you made that statement in the letter? A. The fact that Mr. Mishel had brought in a man and identified him and introduced him as Chernoff.

Q. Outside of those two things, were you relying upon anything else? A. Well, I can't project myself back to my feeling at that time four years ago, but at the moment that is all I can recall.

Q. Now I direct your attention to Government's Exhibit 24. I direct your attention to the second paragraph——

Mr. Hallinan: Withdrawn.

Q. First of all, with respect to this entire exhibit, did you receive this from Dorff & Levy? A. I did.

Q. Did you go over it? A. I read it, yes.

Q. It states in the first paragraph of the letter that:

"We have also interviewed Mr. Miller, the president of the bank."

Did they interview you? A. Well, I don't know whether you call it an (1277) interview. We talked about it many times, yes.

Q. How many times would you say you spoke with them about it? A. Well, it is very hard to say. I would say a number of times. We talked about it over a period of months, so it must have been several times.

Q. I know this is difficult, but as best you can, could you—not the exact date. I am not looking for that, but the approximate time when you first spoke with Mr. Dorff or Mr. Levy about this mater. A. I would have to look at the correspondence to fix the date.

Q. You have no independent recollection; is that right? A. No.

Q. Now I direct your attention again to the second paragraph. I will read the first sentence:

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel."

Did you give them that information? A. Well, I certainly told Mr. Levy enough times when we discussed it what happened, so I would say I gave him that information, yes.

(1278) Q. Let us take the second sentence:

"This person signed the bond in the presence of a teller of the bank and asked the teller to redeem the bond."

Did you give that information to Mr. Dorff or Mr. Levy? A. No.

Q. Was that the fact as you then recall it? A. No, I do not know whether these bonds were signed in the presence of the teller or not.

Q. Isn't it the fact you told us yesterday you did not interview any of the three tellers in this case personally, yourself? A. What do you mean by "interview"; that I never talked to them?

(1279) Q. Did you ever talk to Lucey, Graef or Horan about the cashing of the Chernoff bonds? A. Graef and Horan had left the bank. Whether I talked to Mr. Lucey or not I don't know. I don't recall any conversation with him.

Q. So you state that this second sentence, the information contained in that, No. 1, didn't square with your recollection of the facts; is that correct? A. Which sentence are you referring to?

Q. The second sentence of the second paragraph, Mr. Miller. A. No, I never told that to anybody because it never happened in my presence.

Q. And when you received this letter from Dorff & Levy did you read that sentence? A. Yes, I read the whole letter.

Q. No. We will take it sentence by sentence. Did you read that sentence? A. I read every sentence in the letter; I didn't read it sentence by sentence. I read the letter very rapidly, as I usually do.

Q. Did you call the attention of Dorff & Levy to the fact that that second sentence was not the fact (1280) as you knew it? A. No. Mr. Levy had left for Europe when I got this letter, and I sent it out as it was.

Q. Did you contact Mr. Dorff? A. Yes, I did.

Q. To make a change on page 2; is that correct? A. I did, yes, sir.

Q. Did you call Mr. Dorff's attention to the fact that

that second sentence was not the fact as you knew it? A. No, I did not, not as far as I recollect.

Q. Why not? A. Because Mr. Dorff had nothing to do with preparing this letter and as far as I knew he was not familiar with the file or the facts.

Q. Mr. Dorff finally prepared page 2 and signed the letter, didn't he? A. That was an entirely different matter. That was a question of a legal thing, whether I should—whether that letter should contain that information strictly from a legal point of view. The propriety of whether—what I said before a grand jury should be incorporated in the letter, it had nothing to do with the facts or anything.

(1281) Q. Couldn't you tell Mr. Dorff over the telephone and correct what you knew then and you claim you knew then to be a positive misstatement of fact in the letter, in the second sentence of the letter?

Mr. Rosenblum: I object to the form of the question as assuming something which the witness has not said. He didn't say what you just said.

The Court: I will sustain the objection as to form.

Q. Did you hear Miss Graef, Mr. Horan and Mr. Lucey testify? A. Yes, I had been here right along.

Q. Do you want to play with me, or——

Mr. Rosenblum: Oh, I object to that.

A. No, no.

Mr. Rosenblum: I don't think that is called for or necessary.

The Court: All right. Go ahead. Strike it out.

James W. Miller—Defendant—Cross

Q. Did you hear Mr. Horan, Mr. Lucey and Miss Graef testify from this witness stand that no one from the law firm of Dorff & Levy ever interviewed them with respect to the cashing of the Chernoff bonds? A. I did.

(1282) Q. Do you know whether Dorff & Levy ever interviewed these three people? A. I do not.

Q. I direct your attention now to the third sentence in the second paragraph, "The teller asked for identification and Mr. Miller, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bond."

When you read this letter did you read that sentence? A. Yes.

Q. Did that square with your recollection then of the facts? A. I wouldn't say that it squares exactly, no.

Q. When you talked with Mr. Dorff over the phone about the correction on page 2 on what you called a merely legal matter, did you call his attention to the fact that that didn't square with your recollection of the facts? A. No, I did not.

Q. Why didn't you? A. I already told you; I will have to tell you again.

(1283) Q. Would you, please? A. Yes. That I knew that Mr. Dorff had not prepared this letter. I did not think he was familiar with the file or the facts, or where Mr. Levy had possibly gotten his information or how he prepared the letter, so I didn't discuss anything except what I thought was that one legal point in the last paragraph of the letter.

Q. I direct your attention to the fourth sentence of that second paragraph, "Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

Now I direct your attention specifically to everything up to the semicolon. Do you see what I mean? "Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was." Now did you read that sentence when you read this letter? A. Yes.

Q. Or that portion of the sentence. Did that square with what you say was your recollection of the facts at that time? (1284) A. Well, the words are different but the idea is the same, yes; Mr. Mishel came over to my desk with another man.

Q. But, also, doesn't it express the idea that he came from the teller? A. It says, "Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was."

Q. All right. Let me put it this way. In connection with the above two sentences where it says that they went first to the teller and then to you. A. The paragraph expresses and gives the meaning of a transaction the way Mr. Levy saw it.

Q. The way Mr. Levy saw it? A. Yes.

Q. But you didn't give him this information? A. The two sentences that you have referred to I just said that I did not give him that information, correct.

Q. And you knew them at that time not to square with your recollection of the facts as outlined in these two sentences? A. Yes, it didn't.

Q. And you didn't call it to Mr. Dorff's (1285) attention? A. No, I did not.

Q. Now will you tell the Court and jury once again why you changed page 2 of that letter, of the letter represented in—what is it?—Government's Exhibit 25, the last letter written? A. I thought that Mr. Levy had quoted in there my testimony before the grand jury and I felt

that it should not be quoted in the letter. I called Mr. Dorff and suggested that to him and he agreed with me. And he said that——

Q. Yes? A. And he said, "We will take it out."

Q. Now I show you the original letter that was sent over to you by Dorff & Levy which is Government's Exhibit 29, and Government's Exhibit 30, which is the copy of the second page from the file of Dorff & Levy with the pencil notations made, and 30 which is the yellow sheet with the pencilled notations indicating a change by Mr. Dorff. A. Yes.

Q. Did you testify here that you didn't suggest that language, the change, the language used in the change? (1286) A. I don't recall that I did, no.

Q. And you say that the reason you suggested that change is because you didn't think it was proper to have that matter in a letter; is that correct? A. Yes, that is what I felt.

Q. Did you think it was proper to have it in a copy of the letter in the files of Dorff & Levy? A. Yes, I saw no harm in that.

Q. Just that— A. I didn't actually think that, the way you are telling it right now.

Q. I am quite sure you did not, Mr. Miller. Was your objection just to having in a letter which was sent out or to revealing matter that was testified to before the grand jury? A. Just in a letter that was sent out. Anything I discussed with the attorneys for the bank, this was a bank matter, I see no reason why I can't discuss it with the bank's attorneys.

Q. So in that sense you were willing to reveal what you had testified to before the grand jury, is that correct? A. Yes; I see no harm in discussing it with the attorneys for the bank, inasmuch as this was a bank (1287) matter.

Q. And you were willing to have a record of that in the files of Dorff & Levy? A. Well, when you say "willing," I really never even thought about it at that time.

Q. On the contrary, you thought about it quite seriously, didn't you, at that time? A. I did not think about it in the—from the phase that you are talking about, whether it should be in their files or not, no.

Q. You didn't have any serious objection to revealing on general principles what you had testified to before the grand jury, did you? A. Well, of course I did.

Q. Pardon? A. Of course I have.

Mr. Hallinan: May we have this marked, please.

(Marked Government's Exhibit 70 for identification.)

Q. I show you Government's Exhibit 70 for identification and ask you if you recognize it? A. Yes. It is a handwritten memo made by me for the file.

(1288) Q. Your file, that is? A. Our files.

Q. Yes.

Mr. Hallinan: I offer that in evidence.

Mr. Rosenblum: I have no objection.

(Government's Exhibit 70 for identification received in evidence.)

Q. Do you remember when that memo, approximately when that memo was written by you, Mr. Miller? A. It must have been shortly after Rosenberg was indicted.

Mr. Hallinan: May I read this to the jury, your Honor?

The Court: Yes.

James W. Miller—Defendant—Cross

(Mr. Hallinan reads Government's Exhibit 70 to the jury.)

Q. This is matter that you have testified to before the grand jury, isn't it, Mr. Miller? A. Yes; there is no reference there, though, that I testified then.

Q. It is matter that you testified to before the grand jury, though, isn't it? A. Yes, but most of the information that is in that memo I got from Mr. McAvinue after the man was indicted.

(1289) Q. Mr. McAvinue didn't tell you that you had identified Rosenberg as the person— A. No.

Q. —that you say was introduced as Nat Chernoff? A. No, certainly didn't.

Q. You testified to that effect before the New York County grand jury? A. I certainly did.

Q. Now, Mr. Miller, I want to read page 2, the second sentence of the first paragraph on page 2. This is the letter before page 2 was changed. "Incidentally, Mr. Miller testified before the grand jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel."

Isn't it a fact, Mr. Miller, that you changed or had changed page 2 of that letter because the statement in the first page 2 threw into sharp conflict and stated the exact opposite of what you had stated to Agent Sershen and Agent Sweeney on October 10, 1950? A. It is not.

Q. Didn't you at that time have a very clear (1290) recollection when you caused this second page to be changed that you had in fact told Sershen and Sweeney that the man brought in stood at the front of the bank and you did not even bother to look at him and, therefore, you could give no kind of a description of him? A. That is not so.

Mr. Hallinan: May we have this marked, please.

(Marked Government's Exhibit 71 for identification.)

Q. I show you Government's Exhibit 71 for identification and I ask you if you have ever seen that document before? A. Yes, I must have; I signed it.

Q. Your signature is on it, isn't it? A. Correct.

Q. Is it notarized at the bottom? A. Yes.

Q. By whom? A. George P. Vassil.

Q. Do you recognize his signature? A. Well, his signature isn't on here. I don't think his signature is required on this type of——

(1291) Q. Pardon? A. I do not see his signature here. I don't think it is required on this type of——

Q. Or just the stamp. His notarial, I guess is the word, stamp is on there. Who was Mr. Vassil at that time? A. He was assistant vice-president of the bank and still is.

Q. Do you recall how you happened to sign that? A. I don't recall any of the circumstances, no.

Q. Did you read it before you signed it? A. I probably did.

Mr. Hallinan: I think I am through, your Honor. I just want to check my notes.

Mr. Rosenblum: May I see what you showed the witness, Mr. Hallinan?

(Mr. Hallinan hands to Mr. Rosenblum.)

The Court: We will take a brief recess now and resume at five after twelve. Don't discuss the case.

(Jury retired.)

The Court: Do you have any application, Mr. Rosenblum, with respect to the document?

Mr. Rosenblum: I haven't read it. I will (1292) read it during the recess.

The Court: All right.

(Short recess.)

Mr. Rosenblum: I understand there is nothing before the Court I have to take a position on. We have a document marked for identification.

The Court: I did not know whether you wanted to do anything, in other words, whether you were going to offer it or what. I did not know what you were going to do.

The Court: I thought you had finished it.

Mr. Hallinan: I think on the state of the record I can offer it.

The Court: You finish reading it so you will be up to date on it.

(Jury returned to the courtroom.)

The Court: Have you anything further?

Mr. Hallinan: No, your Honor.

Mr. Rosenblum: May I have Exhibit 69, please?

The Court: I am not clear. Have you decided what you want to do with the last exhibit?

(1293) Mr. Hallinan: I am sorry, your Honor. I would like to offer Government's Exhibit 71.

Mr. Rosenblum: Are you offering the entire document or some particular portion of the document?

Mr. Hallinan: My original offer is the entire document.

Mr. Rosenblum: I object to it first on the ground there is no proof as yet from stenographers as to whether it was or was not accurately transcribed, and secondly, there are notations there concerning off the record which I would like to establish with the persons there at the time if there was something in there which would be of some relevancy to the document itself.

The Court: Let me see it.

(Government's Exhibit 71 for identification handed to Court.)

The Court: Well, I will receive it so far as the competence is concerned.

Can you tell me what pages you are offering with respect to relevancy? Do you want the whole document?

Mr. Hallinan: I can mark it off. Can I (1294) have a little time on that? It is not every page. It is portions of pages.

The Court: All right, fine. Do you want to offer any right now that you are sure of, and then I will give you an opportunity to supplement it later, if you want to? It is up to you.

Mr. Hallinan: I will hold off a little. It will take a little time.

The Court: You go ahead, Mr. Rosenblum.

Re-direct examination by Mr. Rosenblum:

Mr. Rosenblum: May I read 69, which was offered and admitted into evidence this morning? It has not been read to the jury.

The Court: Yes.

(Mr. Rosenblum read Government's Exhibit 69 to the jury.)

Q. Was the original of this letter, Mr. Miller, sent registered to Toplis & Harding? A. That notation on the copy would indicate that it went registered.

Q. And Toplis & Harding are the bonding company's representatives? A. They are the adjusting agents for Lloyds of London, who was our bonding company.

(1295) Q. When payment was made to the Government, you received either at the same time or before or after

the exact same amount, $6684.50, from the bonding company? A. The exact amount, I believe, yes.

Q. Was that sent to you before or about the same time? A. It was about the same time.

Q. Who did you refer to as the "confirmed crook"? A. Mishel.

Mr. Rosenblum: May I have that picture, please?

Mr. Hallinan: Surely (handing photograph to Mr. Rosenblum).

Q. I show you Government's Exhibit 9 in evidence and ask you whether this was the picture of the man that you identified as the man who was introduced to you as Chernoff? A. Yes.

Q. Can you tell us whether or not in the letter I read to the jury which was introduced this morning, you recall, during your cross-examination, can you tell us whether or not that was the man who you referred to as the forger who has been been indicted? (1296) A. Yes, this is the man.

Q. And you testified against him before the grand jury? A. Yes.

Q. And he went to jail, didn't he? A. Yes.

Q. And Mishel went to jail, too? A. Yes.

Mr. Rosenblum: May I have the complete file on the Robino papers, please?

Mr. Hallinan: Exhibits?

Mr. Rosenblum: Plus anything else on Robino.

Mr. Hallinan: It will probably take half an hour.

The Court: We won't wait. You go ahead.

Mr. Hallinan: That reminds me, your Honor, I forgot something. 64, you will recall, was the buy and sell order. 64-A was the marked-off page. I forgot to offer, evidently, 64-A. I thought I had

at the time. So I will offer it now. That is one of the documents he is looking for.

The Court: Received.

(Government's Exhibit 64-A for identification received in evidence.)

(1297) (Documents handed to Mr. Rosenblum.)

Mr. Rosenblum: Do you have a copy of the check and the stub entries? I think you had them here the other day. Also the record of cashier's check issued.

May we use a photostat?

The Court: Of what?

Mr. Rosenblum: Of the document I am looking for.

(To Mr. Hallinan) You have no objection, do you?

Mr. Hallinan: No, I have no objection.

The Court: What is this, the Robino check?

Mr. Rosenblum: It is some documents other than ones in evidence. That I have because it is in evidence.

(Mr. Rosenblum confers with Mr. Hallinan.)

By Mr. Rosenblum:

Q. Mr. Miller, I show you Government's Exhibit 64-A—

Mr. Rosenblum: Is the other one B?

Mr. Hallinan: The check is 64.

Q. I show you, Mr. Miller, Defendant's Exhibit 64——.

The Court: The check is 62, in case anybody (1298) is interested. The book itself was 64. That

is marked for identification. 64-A is the page which was received in evidence.

Mr. Rosenblum: Thank you.

Q. I direct your attention to 64-A, which is part of 64 marked for identification, and direct your attention to these two slips, the confirmations, which are attached.

Mr. Rosenblum: They are part of that, are they not? The two confirmations are part of that exhibit?

Mr. Hallinan: Yes.

Q. I direct your attention to the two confirmations which are part of 64-A and ask you to tell us, if you can, the name of the person at the bank who handled that transaction? A. It says "Attention Mr. Littlefield," which would indicate he is the man that gave the order to the broker.

Q. And who was Mr. Littlefield? A. At that time he was manager of the branch.

Q. And that item of "Attention Mr. Littlefield" appears on both the documents which are attached and part of 64-A? (1299) A. Yes. One is a carbon copy of the other.

Q. Yesterday, if you recall, you were examined with reference to 62, which is the check in evidence. You explained or testified with reference to the manner in which these checks are prepared and also as to whether or not the check was signed by you on the day when the check was issued or at a later time. Do you recall that testimony? A. Yes, I recall that.

Q. Now I show you——

Mr. Rosenblum: Let me mark this first. Will you please mark the rest of these papers?

The Clerk: All of them?
Mr. Rosenblum: Yes.

(Defendant's Exhibits BB through BH, inclusive, marked for identification.)

(1300) Q. BB for identification is the same as 62; right? Because I want to cover the entire batch here.

The Court: What do you mean it is the same as 62?
Mr. Rosenblum: It is a photostat of 62. It is in evidence; I don't want to offer it again.

A. But everything on the photostat doesn't show up on the—everything on the check doesn't show up on the photostat.

Q. All right. Then you tell us, please, what is BB for identification? A. This photostat?

Q. Yes. A. This photostat——

Q. I will state it to you. It is agreed between the Government and myself that we may use photostats in the place of the original.

The Court: I am not agreeing on that. I don't know what you and the Government have agreed to. So we will go ahead. Let us go ahead and we will cross each bridge as we come to it.

Q. All right. A. All I want to call your attention to the fact (1301) is that there is matter on the check which does not show up in the photostat.

Q. You mean because it is not clear? You can't read it like with the "2"? A. No. These initials here don't show up at all.

Q. Then there are initials you say on the check, which is 62, which do not appear on BB for identification? A. Yes. I can't make it out on the photostat.

Q. All right. Will you tell us, please, what is BC for identification? A. That is a carbon copy which is made at the same time the check is made. The check is inserted in the typewriter, and this copy which in the bank is a yellow copy, they come in sets, and they insert them in sets.

Q. This is one of the copies of the set that is made at the time the check is prepared? A. That is correct.

Q. All right. I direct your attention to BD for identification and ask you to tell us what that is? A. It is also a photostat of a second carbon copy that was made at the same time the check was made (1302) up.

Q. So you have an original, then you have two carbon copies that you have covered so far? A. That is right.

The Court: BD is a carbon copy itself, not a photostat.

The Witness: No, it is a photostat of a carbon copy.

The Court: It is a photostat of a carbon I copy. All right.

Mr. Rosenblum: Your Honor, both BC for identification and BD for identification are both photostats.

The Court: BC is a photostat of the carbon?

Mr. Rosenblum: Yes.

Q. Now I show you BE for identification and ask you to tell us what that is? A. That is a photostat of a cashier's check dated October 10, 1949, made to Gude Winmill & Company in the amount of 55 cents.

Q. Now will you please look at the next one, which is BF for identification, and I ask you to tell us what that

is? A. That is a carbon copy of a—well, what we (1303) call a credit ticket dated October 10, 1949, crediting the account which we call the commission account, sale and purchase of securities, for the service charge which was made at the time this transaction was consummated.

Q. That was $50? A. $50. This is an offset rack, and there is the initials of people here.

Q. Will you tell us what BG for identification is? A. It is a photostat of one side of the average balance card for Daniel Robino.

Q. That is the same as—the original of that card is in evidence. A. Yes, we had it here the other day.

Q. Yesterday. A. Yesterday.

Q. Just tell us what the last one is. A. It is a photostat of another side of the same average balance card of Daniel Robino.

Mr. Rosenblum: Well, I will not offer, your Honor, the ones which we have, the originals, any photostats in lieu of the originals.

The Court: I thought you were going to put in photostats in lieu of the originals.

(1304) Mr. Rosenblum: We can keep them all together. I offer them.

The Court: All right.

Mr. Rosenblum: I offer BB for identification, BC, BD, BE, BF, BG and BH for identification.

Mr. Hallinan: I have no objection.

(Defendant's Exhibits BB through BH for identification received in evidence.)

Q. Now, Mr. Miller, first I direct your attention to 62 in evidence, and you testified it has some initials in the corner that do not appear on the photostat of it. Will

you tell us what those initials are? A. These initials are in pencil in the upper lefthand corner of the check, Ralph Littlefield's initials. And there is a stamp of No. 2 teller who cashed the check. Mr. Littlefield's initials indicate that the check can be cashed by the teller even though the teller does not know the man.

Q. That is approval to cash, is that right? A. That is right.

Q. You testified yesterday with respect to Government's Exhibit 62 in evidence, that although you now have before you both the signature of Ralph (1305) Littlefield and J. W. Miller on the front of the check, that you didn't put your signature on it at the same time when Mr. Littlefield put his signature on it?

Mr. Hallinan: I object. I think we could have a few more direct questions, your Honor.

Mr. Rosenblum: I will break it down.

The Court: I will let him answer it. Go ahead.

A. Yes, I so testified.

Q. I direct your attention now to BC', and please tell us quickly just what you said it was before so that we will know which one you are talking about. A. That is the first carbon copy of the check.

Q. Will you tell us whether or not you can, from an examination of BC' in evidence, the original check was signed at a particular time? A. Yes.

Q. Will you tell us, please, what you refer to on the document upon which you predicate your answer "Yes"? A. Any officer who signs a check at the time it is presented to him signs the check itself and on the carbon copy puts his initials. My initials aren't on this carbon copy, which indicates that I was not present or I was not available or that I didn't sign (1306) the check at the time it was issued.

Q. Is it the fact that if you had signed the check on that day, Littlefield hadn't signed, your initials would be on the copy that you just referred to and his would be blank? A. That is right.

Q. Will you look at the third copy and will you tell us whether or not it has an indication—it has some mark thereon which would indicate to you that the check was signed at a time other than the time when you signed it? A. Mr. Littlefield's initials are on his signature line which indicates that he signed the check at the time it was issued. There is nothing on the other signature line, there is no initial, which indicates that I did not sign the check at the time it was issued; probably was not present or available.

Q. From looking at BC in evidence and BD in evidence, can you tell us whether or not the initials of Mr. Littlefield aren't exactly the same so that you could say that it is not a carbon? A. Oh no.

Q. It is not a carbon? A. No. As a matter of fact, these are two (1307) different checks, one has 55——

Q. Oh. In other words, the first check that you referred to as being signed by Mr. Littlefield at a time prior to the time you signed it is BC and that is the check in the amount of $5035.22? A. Correct.

Q. Will you tell us, please, what appears on the lefthand side—or will you tell us, please, what this means that appears on the lefthand side of BC in evidence? A. Well, when this is made up there is attached to the lefthand side of the check a little stub and underneath is—on the carbon is a copy of what appears on the stub, and the stub is a digest of the check.

Q. Giving the date? A. The date.

Q. And the amount? A. And whom it is payable to. It says—well, it shows what the offset is. When you issue a cashier's check you have to have an offset, you have to

have money or cash or charge to a customer's account. That balances it off.

Q. Can you tell us whether or not from an (1308) examination or looking at BC whether there was also another person connected with the bank who had something to do with this transaction, with making entries, or whatever other way you know it? A. There were two other people.

Q. Tell us what that stub—I just direct your attention to initials. A. The initials on the bottom of the stub, there are two sets of initials, J. L. and O. D. J. L. means that Mr. Lucey directed O. D. to actually type the check.

Q. Who was O. D.? A. Well, I did not remember until I heard the name here the other day. Olga Durham.

Q. How about your initials? Are those X marks or initials that appear to the left of that? A. On one of them it looks like something is Xed out. On the other it is just the two initials I just read, J. L. and O. D.

Q. Looking at BE in evidence, will you tell us whether that check, which is to the order of Gude Winmill for the 55-cent difference which was testified by you yesterday is a check signed by Mr. Littlefield and you? (1309) A. Yes.

Q. Were they signed at the same time? A. No. My signature was affixed at a later and subsequent time.

Q. I direct your attention to BF which is in evidence and ask you to just tell us what that represents? A. That is a credit ticket for the commission which we just spoke of which was credited to the bank's commission account for the service in handling this transaction.

Q. Can you tell us whether there are any initials on there which would indicate as to who prepared that commission credit item? A. There's two sets of initials. One is Littlefield's, and the other—these little marks mean L/D, loan and discount. And this "L" under it is Mr. Lucey's initial.

Q. In other words, can you tell us whether or not from looking at that you can tell us who fixed the amount of the commission? A. Well, I really can't. But it wouldn't be Lucey; it would be the manager of the branch.

Q. Who was that? (1310) A. Mr. Littlefield.

Q. Can you tell us whether or not this matter was handled by Mr. Littlefield? A. Everything on the records indicates that he did. I haven't any independent knowledge of whether he did or didn't, but all the records indicate that.

Q. Now I think you told us, so I cover them all, BG, BH are the photostats of the average balance card which is in evidence, is that right? A Both sides of it, yes.

Q. You have stated that you can say that you didn't sign your name at the same time that Mr. Littlefield signed his on the check which was prepared. Then, in addition to the other reasons which you gave us, is there something on the face of the check itself which indicates to you that you didn't sign at the same time? A. Yes. In addition to the fact that I did not sign the duplicate, I had a little sign which was just a secret between the auditor and myself.

Q. Who was the auditor? A. Mr. Heddesheimer. Any time this little tick appeared on the signature meant that I signed it at a subsequent time and not at the time that the check (1311) was made up.

Q. When you say this little tick, will you please indicate just what you refer to? A. It is very hard to describe it without looking at it. It is a little tick, a little above at the end of the signature, just slightly before it.

Mr. Rosenblum: May I direct the jury's attention to that?

The Court: Yes. Will you show it to me when you get around to it?

Mr. Rosenblum: Right here, the little item here (indicating).

The Court: All right.

Mr. Rosenblum: I direct your attention, ladies and gentlemen, to Exhibit 62 in evidence and to the little mark right there, a little like a half moon. I will pass it around, with the Court's permission. This item right here (indicating).

Q. Can you tell us, please, whether or not BC in evidence similarly had the little tick mark that you refer to, which I think you said indicates that you did not sign the check at the same time that Littlefield signed the check? A. It does.

(1312) Mr. Rosenblum: I am directing your attention, ladies and gentlemen, to BE in evidence (showing exhibit to jury).

Q. Will you tell us, please, Mr. Miller, whether or not there was a fixed amount that was charged in connection with transactions of this kind? A. We had a schedule for ordinary transactions, yes.

Q. And will you tell us whether or not under that schedule there was available to whoever fixed the amount of the charge latitude to increase or decrease it based upon the circumstances which were present? A. In many cases you could even waive it if he thought the customer's business justified it. For a special service the charge might be greater.

Q. And the $50 which was fixed in the way you have indicated, did that go to the bank? A. Oh, yes. There is a credit ticket there.

Mr. Rosenblum: May I pass this around?

The Court: Why don't we go to lunch now and you can do that after lunch. I think I told you

before on rainy days the 15 minutes before one o'clock is very important.

(1313) We will take a recess now and resume at 2 o'clock. Don't discuss the case.

(Recess to 2.00 p. m.)

AFTERNOON SESSION

JAMES W. MILLER resumed.

Mr. Rosenblum: May I, your Honor, pass along to the jurors Exhibits 62, BB, BC, BD, BE, BF and BG (handing)?

(Mr. Hallinan approached the bench.)

Mr. Rosenblum: May Mr. Perry approach while I work on this?

(Short conference at the bench between Court and Mr. Hallinan and Mr. Perry off the record.)

(The following proceedings at the bench out of the hearing of the jury.)

Mr. Perry: On the question of Goverament's Exhibit 71 for identification, it is my information that Mr. Hallinan purports to offer this exhibit which consists of minutes of an examination in order to show some purported inconsistency between between Mr. Miller's present testimony and statements made by him in question (1314) and answer form back in 1951 during an examination before trial.

Now we will object to the use of these minutes in any form for the following reasons: First of all, the testimony of Mishel is that Schnabel was sent to the bank; the testimony of Schnabel is that he was at the bank; the testimony of Miller

here is that he had seen Schnabel at the bank. So that insofar as Schnabel's presence at the bank is concerned there is no inconsistency in any of the testimony.

Now the question of whether or not Miller made a prior statement at any time which was inconsistent with his trial testimony on this point is, we submit, collateral to the issues at hand, and consequently we say the Court is bound by Mr. Miller's answers; and his answers in substance were either he does not remember the examination, or if it is in there it must be so. I would say, your Honor, that that would preclude any further inquiry and that it would be, we suggest, error for the Court to permit in evidence these minutes, which are Exhibit 71, or to go beyond that and try to establish that there were connections made, which I am told by Mr. Hallinan (1315) that that is one of the things he proposes to show, that there were additions or corrections or amendments made in this testimony by Miller, and I would suggest all that is collateral to the issues and therefore should be excluded and, initially, should not even be permitted.

Mr. Hallinan: I would say, in short, that I will argue to the jury, I think just on its face, the denial of knowing Morty Schnabel under the circumstances of that examination, where Morty Schnabel was described to him, where the man says now the primary reason why he remembers him is because of the harelip, and I think it is devastating, to put it mildly——

The Court: Who developed his recollection of Schnabel?

Mr. Hallinan: On direct——

The Court: And lack of recollection—it is not

just a question of whether Schnabel came in the bank. It is the testimony that it suggests that Schnabel—he doesn't say this, but he says by his recollection Schnabel came in and Siegel didn't.

Mr. Perry: Yes.

The Court: And I think this shows an (1316) inconsistency in his recollection of Schnabel but not Siegel. In other words, if he had said he did not recollect either or he recollected both, I am not sure that this would be of particular interest, but where he seems to suggest that Schnabel came and Siegel didn't, I think that this is admissible to show that on a prior occasion his recollection wasn't any better as to one than the other.

Mr. Perry: One thing I do want to stress, your Honor, is that his trial testimony is at least on that point entirely in accord with what the Government——

The Court: It is not consistent with the statement that Siegel and Schnabel came. He suggests that only one came.

Mr. Perry: May I ask, Judge—these minutes, Exhibit 71 for Identification, have nothing to do with Siegel?

The Court: I think it suggests that his recollection is no better as to one than the other. That is what the Government would argue. I am not finding that.

Mr. Hallinan: I think also, in any kind of (1317) case, especially in criminal cases, you can always show that the person made inconsistent statements on the theory that it shows consciousness of guilt.

The Court: No.

Mr. Hallinan: Yes.

Colloquy of Counsel

The Court: Oh, I see what you mean.

Mr. Perry: It is where they are inconsistent with his testimony; it is where the position taken at the trial by the witness is inconsistent with the Government's theory. This is consistent with that theory. He says he knew Schnabel. There is nothing inconsistent.

The Court: Is it your claim that the denial of recollection of Schnabel in this examination before trial has something to do with showing consciousness of guilt?

Mr. Hallinan: That is one of the theories, yes, your Honor. And then the purpose outlined by your Honor.

The Court: I will take it. I will let him bring it in.

Mr. Perry: What is the point you want to make?

Mr. Hallinan: I have marked them all in (1318) here. I guess the best way to treat this, if everybody agrees, the Court and my opponent, is to read into the record the portions out of here.

The Court: All right.

Mr. Hallinan: Because I told you I had an unfortunate example with another document that got before the jury.

The Court: All right.

Mr. Perry: I am sorry.

The Court: He just wants to read—in other words, we will receive the marked portions in evidence and we will read them in and there will be no physical exhibit.

Mr. Hallinan: I am going to read enough to identify this from the caption and——

Mr. Perry: With Miller? Are you going to do this with Miller or some other witness?

Mr. Hallinan: What do you mean with some other witness? I am going to read it to the jury myself.

Mr. Perry: It is not in evidence.

The Court: I will receive those portions as marked.

Mr. Perry: Has Mr. Rosenblum raised the technical requirement of getting the reporter?

(1319) Mr. Hallinan: This man signed it and said he proofread it.

Mr. Perry: Oh, I was out of the courtroom at the time, your Honor.

The Court: Okay.

(Pause.)

The Court: Mr. Hallinan and Mr. Rosenblum, would you come up here, please.

(Discussion off the record at the bench.)

The Court: I guess we are all ready, Mr. Rosenblum.

Re-direct examination continued by Mr. Rosenblum:

Q. Mr. Miller, do you recall Mr. Hallinan asked you during his examination about a kite and then he described one to you; do you recall that? A. Yes, I recall that.

Q. Did you have a kite in the bank? A. Yes, we discovered a kite being run by Mr. Littlefield.

Q. And about when was that? A. That was in November of 1949.

Q. What did you do after that? A. We discharged Mr. Littlefield.

James W. Miller—Defendant—Redirect

Q. Can you tell us what persons connected with (1320) the bank are necessary to run a kite? A. Well, it would be a combination of chief clerk, manager, teller and possibly bookkeeper.

Q. Was that discovered after Mr. Littlefield took ill? A. Yes.

Q. Can you recall how long after that? A. Well, I would say within a few days. He tried to continue to run the kite from the hospital, and the teller that he was giving instructions to reported it to the manager.

Q. Was that a man by the name of Hall? A. Hall yes.

Q. Mr. Hallinan questioned you with reference to some questions and answers you gave in connection with a suit. I think it was referred to as the Rialto suit. Do you remember that? A. Yes, I remember him asking me.

Q. Can you tell us just what that suit was about.

Mr. Hallinan: I will object to this. I think what it was about is irrelevant, your Honor. The fact of the questions, the fact of the answers as they relate to this matter, unless Mr. Rosenblum wants to—I culled out portions of this just to (1321) avoid putting the whole thing into evidence. If the whole thing should go into evidence, I think we can solve it that way.

Mr. Rosenblum: I will withdraw it. I think we can save time that way.

Q. Do you recall that Mr. Hallinan questioned you yesterday, or I think it may have been the end of the first afternoon when he questioned you regarding a Mr. Collier; do you recall that? A. Yes.

Q. Who was Mr. Collier? A. He was the president of the bank up until the time he died. That would be from——

Q. Will you keep your voice up, please? A. Yes.

Q. When you say "president of the bank," you are referring to what bank? A. Pennsylvania Exchange Bank.

Q. Do you know about when he passed on? A. I think it was 1945.

Q. Can you tell us whether or not—I will lead you as to this—you were vice-president at the time of his death? A. I was.

(1322) Q. For how long a time prior to the time of his death did you become a vice-president? A. I was vice-president from 1930 until 1946.

Q. '30 to '46? A. Yes.

Q. Do you recall Mr. Hallinan—I am referring to page 1135, the bottom of the page, and the top of 1136—asked you whether Mr. Collier criticized you for making loans to bookmakers; do you remember that? A. I remember he asked me that, yes.

Q. Tell us, please, did you have the power or duty, or responsibility to make loans at that time? A. No, I did not. Only Mr. Collier had it.

Q. That is definite? A. I am quite sure it is, yes.

Q. You were also questioned with reference to permitting checks to be paid against uncollected funds.

Will you please tell us under what circumstances the bank paid checks which were issued against uncollected funds? A. We paid some every day.

Q. Tell us the circumstances when you did and when you didn't. (1323) A. Well, it is very hard to pin it down. Each case was considered on its own. The managers or the chief clerks, whoever was handling the referral sheets, usually checked the thing out and referred to me at the end of the day if it happened to be in the office where I was, and I relied on whether they told me everything was all right, and I would simply initial them at the end of the day.

James W. Miller—Defendant—Re-direct

Q. I believe Mr. Hallinan asked you if you recall that Mr. Lucey at one time, and Mr. Brennan at another, used to handle the referral sheets as far as Mishel was concerned. Do you recall that? A. Yes, I recall discussing it. Q. Did Mr. Lucey handle them? A. Mr. Lucey was not made chief clerk until some time in the spring of 1950, so he wouldn't have handled it at any time that Mishel's accounts were active unless it was possibly some time in the spring of 1950. I don't recall exactly when he was made chief clerk.

Q. Do you recall, Mr. Miller, that yesterday you were examined by Mr. Hallinan with reference to Government's Exhibit 46, which is made up of 26 charges each in the amount of one dollar and concern (1324) themselves about Irving Mishel, 2960 Third Avenue; do you recall that? A. Yes.

Q. What did you have to do with the preparation of those slips? A. Nothing. I have never seen these slips before.

Q. You referred to a referral sheet; do you recall? A. Yes.

Q. Tell us what appeared on the referral sheet. A. All of the items that the bookkeeper had reported after they had posted the exchanges, all the items that appeared as having been short or uncollected at the time they posted the account.

Q. And in connection with that service there was a charge of a dollar? A. Not simply being on the referral sheet, no. The charge arose in this way: If, after the manager or chief clerk had gone through the referral sheet, and in most cases most of the items would be eliminated either by telephoning to the customer to cover or having found in the bookkeeping department there had been a mispost from one account to another (1325) or a miscalculation in the number of days involved in the un-

collected, so when the sheet was finished, while the sheet started out with 20 or 30 names on it, they would have eliminated possibly half of them a quarter. It depends on the particular day. If any item was paid against uncollected funds or against a deposit made the same day to cover, then a charge of one dollar was made. The sheet then went to a girl—I don't recall exactly which girl—a different one in each office—and from that sheet she made up these notices. They were made up, I believe, in triplicate. One went——

(1326) Q. Did you have anything to do with those particular steps? A. No, nothing.

Q. Did you at any time give any special preference treatment to Mishel's items as against other customers' items? A. No, they were just like anybody else on the list.

Q. You say at the end of the day a referral sheet was brought to you by the manager of the bank who discussed with you what was on it? A. Yes; there was very little discussion. I simply asked him if he pointed out that there was something that he didn't want to O. K. that he shouldn't, it went back.

Q. Then you initialed it? A. I only initialed it if he said it was O. K. I didn't go to the books or anything to check it up.

Q. Was there a single occasion when you ever said to either Mr. Brennan or to Mr. Lucey or anyone in connection with one of Mr. Mishel's items that he should get some special preferred treatment in that regard? A. I would say no. I certainly don't recall any.

(1327) Q. I show you Government's Exhibit 45 in evidence which is the signature card of Sam Marco with an address Forrest Hotel, "typed in, 250 West 49th Street, and then appears, c/o Sam Siegel, 1416 Walton Avenue, Bronx, 54." I think it looks like, New York.

Now, tell us, did you ever see this card with the name Sam Siegel on it? A. No. These are kept in the signature files with the tellers and with a duplicate file—there are two files, one in each office. Duplicate files. They are kept by the tellers. I never saw the signature cards.

Q. I mean prior to this case or the preparation of this case. A. Yes.

Q. You understand that, do you not? A. Yes.

Q. Did you ever see that card, did anyone bring to your attention that card with the penciled words "Sam Siegel" on it? A. No, I didn't see any reason why they should have. I don't recall ever seeing the card until we saw it here recently.

Q. That card has, does it not, on it, the person who got credit for the account, Sam Marco? (1328) A. Yes, it has my initials on it, J. W. M.

Q. That has been referred to us as one of the stiff accounts, is that right? A. Yes.

Q. The same as Exhibits 10 and 11, the Case account and the Young account were also referred to as stiff accounts? A. That is right.

Q. Take a look at that card. Tell us who opened that account. A. The initials are, it says, "Opened by RHL," which is Mr. Littlefield.

Q. Mr. Littlefield opened it, is that right? A. Yes.

Mr. Rosenblum: Without taking the time to pass it around, may I just direct the jury's attention to one item?

The Court: All right.

Mr. Rosenblum: I will read: On top is Sam Marco, individual, Sam Marco, c/o Forrest Hotel, 250 West 49th Street, New York City. Then the pencil notation, c/o Sam Siegel, 1416 Walton Avenue, Bronx, and introduced by J. W. M.

You say that is a credit?

(1329) A. Right.

Mr. Rosenblum (to the jury): And then "opened by RHL." It has been testified to as being the initials of Mr. Littlefield. An initial deposit $200. Business salesman. 12-28-48. Then in ink, closed September 15, 1949, $124.21.

Q. I show you Government's Exhibit 61 in evidence and ask you whether this is the opening sheet for Frank Williams that has been referred to as one of the stiff accounts. Do you remember that? A. Yes. It is.

Q. Now, can you tell us whose handwriting that appears to be? A. It appears to be in the handwriting of Mr. Littlefield, as near as I can recall his handwriting.

Q. I show you 59 in evidence which is the opening sheet in the name of S. H. Newman, which likewise has been testified to as being one of the stiff accounts, and ask you whether you can tell us in whose handwriting that is written. A. It appears to be Mr. Littlefield's handwriting.

Q. Can you tell us whether or not an opening sheet is first prepared before a signature card is prepared? (1330) A. Well, that really depends on the situation, Mr. Rosenblum. If the signature card is brought in by a depositor with a signature on it, of course, the signature is the first thing that is on the card, then whoever opens the account and takes the initial deposit gives the customer the check book, and then he makes out, or she makes out, this opening sheet.

Then from the—the opening sheet is handed with the signature card to the secretary or clerk. And from this sheet she types on to the signature card such information as should be shown on the signature card. From that she—if the sheet shows it, and in many cases it does, who gets credit, if it is my initials she types in my initials. If there is no initials on the sheet as to who actually opened it, she recognizes the handwriting, she puts it down. If

she didn't, I suppose she would inquire as to who opened the account. Or she would probably, might—if it didn't show on the sheet she might even inquire as to who gets credit.

Q. You say in the case of Frank Williams and the Newman, they look like the handwriting to you of Littlefield? A. As near as I can tell it, yes.

(Defendant's Exhibit BI marked for identification.)

(1331) Q. I show you Defendant's Exhibit BI for identification, Mr. Miller, and ask you if you can tell us whether or not this card comes from—first, tell us what it is. A. It is a signature card for a regular checking account.

Q. Can you tell us whether it comes from the files of the bank? A. Yes.

Q. Can you tell us whether this record was kept in the regular course of business at the bank and whether it was the business of the bank to maintain such records in its regular course? A. Yes.

Q. You say this represents a signature card of a depositor? A. Regular checking account.

Q. Regular checking depositor.

Mr. Rosenblum: I offer BI in evidence.

Mr. Hallinan: I have no objection.

(Defendant's Exhibit BI for identification received in evidence.)

Q. Mr. Miller, will you tell us, please, who (1332) opened what has been referred to as the stiff account in the name of Frank Williams? A. It was opened by RHL, Mr. Littlefield.

Q. It appears right on the signature card? A. Yes, sir.

James W. Miller—Defendant—Re-direct

Mr. Rosenblum: Do you have any signature card for Newman?

Mr. Hallinan: No, we don't, Mr. Rosenblum.

Mr. Rosenblum: May I pass this around very quickly among the jurors?

The Court: All right.

Mr. Rosenblum: May I direct the jury's attention to the item, "Opened by RHL".

May I also pass around the opening sheets at the same time?

The Court: All right.

(Mr. Rosenblum hands to jury.)

(1333) Mr. Rosenblum: Mark this for identification, please.

(Defendant's Exhibit BJ for identification marked.)

Mr. Rosenblum: Counsel for the Government has agreed I may use a photostat.

By Mr. Rosenblum:

Q. Mr. Miller, I show you BJ for identification, 57 in evidence and 58 in evidence, and ask you if you can tell us who opened those accounts. A. The two signature cards appear to be like duplicates. They are both made at the same time when the account was opened. It shows on here that the account was opened by RHL, Mr. Littlefield.

Q. Mr. Littlefield? A. Yes.

Q. Take a look at the opening sheet. A. You couldn't tell anything from the opening sheet except by knowing his handwriting.

Q. What would you say it is? A. I would say, as near as I can recall, this is his handwriting.

Mr. Rosenblum: I offer BJ for identification in evidence.

(1334) Mr. Hallinan: No objection.

(Defendant's Exhibit BJ for identification received in evidence.)

Mr. Rosenblum: May I pass these to the jury? I direct the jury's attention to the initials RHL where the opening appears. This is the opening sheet and these are the two opening signature cards (handing to jury).

By Mr. Rosenblum:

Q. Mr. Miller, I show you Government's Exhibit 66 which is in evidence, which was read yesterday, if you recall, to the jurors, and is a memo in your handwriting with reference to the Mishel Wine and Liquor Corporation which gives the address, sold out Feb. 1950, W. B. Gordon, William Gordon, President, 11 West 42nd Street, Incorporated, as Bennett Liquors, 1-12-50.

Will you tell us, please, when you prepared that memorandum in point of time as against the date of the loans, one being testified to having been made on March 2, 1950, and the other on March 9, 1950? A. I would say that this was made sometime after June of 1950, between June of 1950 and possibly March of 1951.

Q. That means several months after the loans had been made?

(1335) Q. And will you tell us the source from which you obtained this information? A. This information was taken out of Dun and Bradstreet report which we received in June of 1950.

Q. Do you recall, Mr. Miller, yesterday being questioned about a 20 per cent of the loan being made at the bank. Let me see if I can put it differently.

I think you said after a loan is made that the bank desires or wants the person who had obtained the loan, the depositor, to maintain about 20 per cent of the amount of the loan in the depositor's bank account? A. That's correct. We call that a working balance.

Q. And do you recall whether or not the amount in the account of the Mishel Wine and Liquor Company before the loan was very, very low? A. Yes.

Q. And then based upon the information made available to you you recommended a $5000 loan to the liquor company and then the executive committee recommended another $5000 loan? A. Yes. Well, I made a $5000 loan and recommended another one to the committee for $5000 which they approved.

Q. And the committee approved, is that right? (1336) A. That is correct.

Q. Thereafter, for a while, was there in the account 20 per cent of the loan maintained? A. The average balance card shows that there was $2000 balance maintained.

Q. And then after that do the records show that it went down to something like $2.35 or something? A. Well, I don't know what it went down to, but it shows on the average balance card that the balance went down.

Q. Well, do you remember Mr. Hallinan asked you yesterday whether or not, I think at the end of March, the amount of the balance was a few dollars? A. I remember him saying that, yes.

Q. But that was after there had already been maintained, according to the average balance card, 20 per cent in the loan? A. That is correct, yes.

Q. In the bank itself? A. That is correct.

Q. Was that after Mishel went bad? A. He went bad sometime in the latter part of March, yes, I would say so.

Mr. Rosenblum: If your Honor is going to take (1337) the recess I may not have anything further

of this witness at the moment. Unless you wish to examine him, if he wants to.

The Court: I think we will go another fifteen minutes now.

Mr. Rosenblum: I have another witness who will be here in about fifteen minutes.

The Court: You are through now, are you?

Mr. Rosenblum: Yes.

Mr. Hallinan: I have no further questions, your Honor.

The Court: All right. Step down, Mr. Miller.

Mr. Hallinan: I think this would be a good time to read this, however.

The Court: I think Mr. Rosenblum is trying to make up his mind whether he wants to ask some more questions.

Mr. Rosenblum: If I may have time for my witness to come—he is on his way.

The Court: I will tell you this right now, I am not going to wait for anything from here on in. And, Mr. Miller, you may step down, as Mr. Hallinan has something to read. And that goes for the both of you; if your witnesses aren't here from now on we are going to (1338) get along without them.

You go ahead and read your document and we will take our recess after that.

(Witness left the stand.)

Mr. Hallinan: I am going to read from Government's Exhibit 71, portions of which have been admitted or received in evidence.

The caption of Government's Exhibit 71 reads as follows: "City Court of the City of New York. County of New York: The Pennsylvania Exchange Bank, Plaintiff, v. Rialto Realty Corporation, Irving Spieler and Irving Mishel, Defendants."

Excerpts from Government's Exhibit 31 Read into Record

Then below that, another caption:

"Rialto Realty Corporation, third party plaintiff, vs. Irving Mishel and James W. Miller, third party defendants.

"Examination of plaintiff, The Pennsylvania Exchange Bank, by its president, James W. Miller, taken by defendants Rialto Realty Corporation and Irving Spieler, pursuant to order of Mr. Justice Henry S. Schimmel, dated October 16, 1950, and The Pennsylvania Exchange Bank, 20 West 48th Street, New York 19, N. Y. on April 19, 1951, at 2.30 P. M.

"Appearances: Dorff & Levy, Esqs.

"Attorneys for plaintiff and third party defendant (1339) James W. Miller, 8 West 40th Street, New York 18, N. Y. by Bernard Weiss, Esq. of Counsel.

"Samuel Mezansky, Esq., Attorney for Defendants and Third Party Plaintiff Rialto Realty Corporation and Irving Spieler, 350 Fifth Avenue, New York 1, New York.

"James W. Miller, called as a witness by Defendants Rialto Realty Corporation and Irving Spieler, being first duly sworn by the Notary Public, testified as follows":

I go to Page 5.

"Q. Do you know a person by the name of Mortie or Mortimer Schnabel? A. Mortimer Sennabel?

"Q. Yes. A. No.

"Q. Let me try to describe him to you. Would it help your memory if I told you that he was a person that had a harelip and was a messenger in the employ of Irving Mishel. A. No, it doesn't.

Excerpts from Government's Exhibit 71 Read into Record

"Q. It doesn't refresh your recollection? A. Not a bit, no.

"Q. Would it further help to refresh your recollection (1340) if I were to tell you that he was sometimes known and described as Mickey? A. No."

I am now reading from Page 7:

"Q. Well, do you know any persons in the employ of the defendant Irving Mishel? A. No."

Going to Page 28:

"Q. To your knowledge, did he have any dealings or transactions with any other officer of the bank?"

Are you following this? Will you agree that "he" in that question refers to Mr. Mishel?

Mr. Perry: Where is that?

Mr. Hallinan: On Page 28, near the bottom.

"Q. To your knowledge, did he have any dealings or transactions with any other officer of the bank?"

Mr. Perry: Yes, that is Mishel.

Mr. Hallinan (Continuing reading):

"Q. To your knowledge, did he have any dealings or transactions with any other officer of the bank? A. I believe he had most of his dealings with me."

On Page 47:

"Q. And you say you have never met this Mortie Schnabel?"

Excerpts from Government's Exhibit 71 Read into Record

(1341) Mr. Hallinan: There is no answer to that. The following——

Mr. Perry: Excuse me. You are jumping from place to place, aren't you?

(Mr. Perry conferred with Mr. Hallinan off the record.)

Mr. Perry: Oh, I am sorry.

Mr. Hallinan (Continuing reading):

"Q. Did Irving Mishel, to your knowledge, ever send over a messenger boy to make deposits for him? A. Frankly, I don't take deposits, so I wouldn't know."

Mr. Perry: There have been portions closely, as a matter of fact, following the questions——

The Court: Do you want to read anything?

Mr. Perry: Maybe I——

The Court: Surely.

Mr. Perry: On Page 7 Mr. Hallinan read one question and one answer:

"Q. Well, do you know any persons in the employ of the defendant Irving Mishel?"

And the answer is, "No." And Mr. Hallinan stopped there. There is another question and answer I think should be read. The other question immediately (1342) following:

"Q. Did Irving Mishel at any time, within your knowledge, cause certain moneys to be brought to the bank for deposit or for other purposes by a messenger in his employ? A. It could have been. I wouldn't know."

Page 28, Mr. Hallinan read one question and one

Excerpts from Government's Exhibit 71 Read into Record

answer. The question and answer Mr. Hallinan read were as follows:

"Q. To your knowledge, did he"—meaning Mr. Mishel, we conceded.

"Q. —did he have any dealings or transactions with any other officer of the bank? A. I believe he had most of his dealings with me."

Immediately following that is another question and answer which we think should be in, your Honor.

Mr. Hallinan: I agree.

The Court: Yes.

Mr. Perry: And the other question is—if you agree, you should have read it.

The Court: Go ahead.

Mr. Perry: The other question is:

"Q. Do you know whether he had any dealings with Mr. Gallagher? (1343) A. No. I don't believe he did."

Page 47 Mr. Hallinan read the following question and answer:

"Q. Did Irving Mishel, to your knowledge, ever send over a messenger boy to make deposits for him? A. Frankly, I don't take deposits, so I wouldn't know."

Immediately following that is another question and answer as follows. These were not read to you.

"Q. Did Irving Mishel ever deliver or cause to be delivered any papers, or other documents, to you by a messenger boy? A. Oh, he could have."

The Court: Anything else?

Mr. Hallinan: I have nothing else.

Mr. Perry: I think that completes it.

The Court: Everybody is happy now. We will take a ten-minute recess. And don't discuss the case.

(Short recess.)
(1344) The Court: Bring in the jury.
(Jury enters courtroom.)
The Court: Call your witness.
Mr. Rosenblum: Mr. McAvinue, please.

JOHN A. MCAVINUE, JR., called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Rosenblum:

Q. What is your profession, Mr. McAvinue? A. Attorney-at-law.

Q. And for how long a time have you been practicing as an attorney? A. Sixteen years.

Q. And were you at one time a member of the staff of the District Attorney of New York County? A. I was.

Q. Was that during the time when Mr. Hogan was the District Attorney? A. It was.

Q. Will you tell us what years you served in that capacity? A. From 1942 to 1956.

Q. '42 to '56? A. That's correct.

(1345) Q. Are you now practicing law? A. I am.

Q. I have talked with you about this case, have I not? A. You have.

Q. Have you talked with Mr. Hallinan about it? A. I have.

Q. Have you talked with Mr. Malinky about it? A. No, I don't believe so, not recently.

Q. During the time you worked on the case and he worked on the case? A. That's correct, yes.

Q. Were you in charge of an investigation and thereafter a prosecution involving one Irving Mishel? A. I was.

John A. McAvinue, Jr.—for Defendant—Direct

Q. Can you tell us when for the first time any person ever spoke to you about Mr. Mishel's swindles?

Mr. Hallinan: I will object to this, your Honor. May we approach the bench, please?

The Court: Yes.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: I am going to object to any broad questions about Mr. Mishel. The purpose of (1346) this witness I can see if it is restricted and limited to questions as to what statements Mr. Mishel made. Then I will not object. But I will object to any wholesale question about what he knew about Mishel or the investigation he made of Mishel or anything of that nature.

The Court: All right?

Mr. Rosenblum: Yes, sir.

(Proceedings were resumed within the hearing of the jury as follows.)

Mr. Rosenblum: Will you read the question, please.

(Question read.)

Mr. Hallinan: I renew my objection.

The Court: I will sustain the objection.

Q. The same question in connection with the Pennsylvania Exchange Bank.

Mr. Hallinan: Objection. It is too broad, your Honor.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception to both of your Honor's last rulings.

Q. Tell us, Mr. McAvinue, was there a time when a person representing the Pennsylvania Exchange Bank

(1347) talked with you with reference to the loans obtained by Mr. Mishel from the Pennsylvania Exchange Bank in March of 1950? A. Yes, there was.

Q. Can you tell us who that person is? A. Thomas J. Reedy.

Q. You have known Mr. Reedy, have you not? A. I have.

Q. For how many years have you known him? A. 25.

Q. I think he is a classmate of yours? A. No, he is a little older than I am. He and I were in the same law office at one time.

Q. He is a lawyer? A. He is.

Q. Do you know that he was then a high official of the Pennsylvania Exchange Bank? A. I did.

Q. And will you tell us about when that was when you say the first person that ever spoke to you about the subject matter I called to your attention? A. May 1950.

Q. Tell us what was said.

Mr. Hallinan: No. I will object to this (1348) on the ground of hearsay, your Honor.

The Court: Sustained.

Mr. Rosenblum: Exception.

Q. What date did you give? A. May 1950.

Q. May 1950; is that correct? A. That's correct.

Q. Thereafter did you speak with Detective Barney Ridge regarding the same subject matter?

Mr. Hallinan: I will object to this on the ground relevancy, your Honor.

The Court: I will sustain it.

Mr. Rosenblum: Would your Honor hear the end of my question? Regarding the same subject matter.

John A. McAvinue, Jr.—for Defendant—Direct

The Court: Whether he spoke with somebody else?

Mr. Rosenblum: Yes.

The Court: I will sustain the objection.

Q. Did you, during the course of your investigation, talk with Mr. Mishel? A. I did.

Q Did he ever tell you that he attended a meeting which was also attended by Mr. Gallagher of the Pensylvania Exchange Bank and Mr. Miller of (1349) the Pennsylvania Exchange Bank whereat there was a discussion regarding Mr. Mishel being allowed to carry on illegal transactions with Mr. Miller? A. No.

Q. Did Mr. Mishel ever tell you that he sent money to Mr. Miller through any person? A. No.

Q. Specifically, through Sam Siegel? A. No.

Q. Through Norton Schnabel? A. No.

Q. Through Irving Mickey Rosenberg? A. No.

Q. Or any other person? A. No.

(1350) Q. Did Schnabel ever tell you whether or not he delivered money to Mr. Miller?

Mr. Hallinan: I object to this, your Honor.

Mr. Rosenblum: May we approach the bench, your Honor?

The Court: Yes.

Mr. Hallinan: I will withdraw my objection, your Honor.

The Court: All right.

A. No.

Q. Did you have a talk with Mr. Schnabel regarding the matter of bringing money to Mr. Miller? A. I did.

Q. Just tell us what that is. A. Mr. Schnabel—I must preface it by saying he was cooperating with the District Attorney's office——

Colloquy of Counsel

The Court: I think I will strike that on my own motion. Go ahead.

A. Mr. Schnabel came to my office and told me that Irving Mishel had asked him to execute an affidavit——

Mr. Hallinan: I will object.

Mr. Rosenblum: Wait.

(1351) Mr. Hallinan: No. The thought just occurred to me—may we approach the bench just briefly, please?

The Court: Yes.

(The following proceedings occurred at the bench out of the hearing of the jury.)

Mr. Hallinan: The thought should have occurred to me before. Schnabel never testified he brought down money. Schnabel testified he brought down envelopes. It was Mishel who said——

The Court: We will strike it.

Mr. Perry: Are you ruling on that, Judge?

The Court: Yes.

Mr. Perry: Then I say to you, this testimony from Schnabel was brought out after Mishel had testified about sending money down to Mr. Miller. To us it is clear, I respectfully suggest——

The Court: I see what you mean.

Mr. Perry: I respectfully suggest it is clear that the implication is there. If Mr. Hallinan wants to say now to this jury that he didn't intend to leave any impression that Schnabel brought money down, that is all right. Otherwise that leaves us (1352) at a terrible disadvantage.

The Court: That is a matter for argument. I will take this, but I want it limited; I don't want any long speech that he is starting to give now about cooperation and everything else.

John A. McAvinue, Jr.—for Defendant—Direct

(The following proceedings in open court, in the hearing of the jury.)

The Court: Did you ever ask him the question whether he brought money to Mr. Miller?

The Witness: No.

The Court: All right. Go ahead.

Q. Did you have any talk with Mr. Schnabel with reference to what Mr. Mishel wanted Mr. Schnabel to say in that regard?

Mr. Hallinan: I object to this, your Honor; clearly irrelevant.

The Court: Yes. I will sustain the objection. In other words, if you want to develop that line you do it with the witness directly and not by hearsay.

Mr. Perry: May we be heard on that?

The Court: Yes.

(The following proceedings at the bench out of the hearing of the jury.)

(1353) Mr. Perry: I say the situation under which Schnabel testified is clear, I suggest it is clear, that he was bringing money down. Now Schnabel came to the District Attorney—may I finish for the record, your Honor? If you deny it we will have it on the record. Schnabel came to the District Attorney and said to him that Mishel had asked him to sign a false affidavit that he gave money to Miller, and he asked Mr. McAvinue whether or not he should sign it, and Mr. McAvinue said, "If it is false you are subjecting yourself to a perjury charge, and if it is true you have no concern."

The Court: You had better cross-examined him about that when he was on the stand. You could have cross-examined Mr. Schnabel.

Mr. Hallinan: That is right.

The Court: Schnabel can testify to it of his own knowledge, but Mr. McAvinue can only say what Schnabel told him as a matter of hearsay.

Mr. Perry: I think we asked Mr. Mishel that and I believe your Honor stopped us. I wouldn't want to state that as a fact, but it was my impression that you stopped us.

The Court: I would doubt that I did. (1354) But you can check that. Anyhow, this is not the proper way to do it. This is something that you can ask Schnabel because he knows what Mishel told him. This man doesn't. He only knows what Schnabel told him. Schnabel might have been lying about it.

Mr. Perry: That may be. But it should be allowed for what it is worth.

The Court: I don't think so.

Mr. Perry: We except.

(The following proceedings in open court in the hearing of the jury.)

The Court: Objection sustained.

Q. Did Sam Siegel ever tell you that he delivered money to Mr. Miller?

Mr. Hallinan: I object to this, on the face of it.

The Court: I think you had better lay the foundation.

Q. Did you have discussions with Mr. Sam Siegel regarding Mr. Mishel's relationship with Mr. Miller? A. No.

Q. Did you have any talk with Mr. Schnabel regarding the relationship of Mr. Mishel with Mr.(1355) Miller? A. Yes.

Q. Will you tell us whether or not Mr. Schnabel ever said that he brought money to Mr. Miller?

John A. McAvinue, Jr.—for Defendant—Direct

Mr. Hallinan: I object.

The Court: We have been over that. I sustain the objection to it as repetitious.

Q. You said before you had a conversation with Mr. Schnabel. Tell us what that conversation was.

Mr. Hallinan: Oh, no.

The Court: I will sustain the objection.

Mr. Rosenblum: Exception. No further questions.

Mr. Hallinan: I have no questions, your Honor.

The Court: All right. Thank you, Mr. McAvinue.

The Witness: Thank you, Judge.

The Court: Next witness.

The Witness: May I be excused?

The Court: Yes, you are excused.

Mr. Rosenblum: May I just go out to see if the witness has arrived?

(Mr. Rosenblum left the courtroom.)

(1356) The Court: There was an inquiry from one of you as to whether this case was going to go into next week. You never know what is going to happen on a lawsuit, but my guess is that it will not, in other words, we will finish this week.

KENNETH RAYBURN, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Perry:

Q. Mr. Rayburn, where are you employed? A. Pennsylvania Exchange Bank.

Q. In what capacity? A. Chief clerk.

Q. For how long have you been employed there? A. Not quite seven years.

Q. When did you start? A. February 1950.

Q. Mr. Rayburn, to get us moving along a little faster, in February of this year did you have occasion to be in the storage room of the Pennsylvania Exchange Bank? A. Yes, sir.

Q. Will you tell us, please, what you were doing there? (1357) A. Well, at the time we were putting in a new check printing system, so we had a large cabinet that was set near a corner or wall which we had to move, and in moving this cabinet in that corner there was a lot of objects, waste objects and unused signs, and also two pictures, which we didn't know at the time what they were. But we tore the wrappings to examine them, and we found out one looked like a lithograph and the other was a portrait or a photograph portrait.

Mr. Hallinan: I will object to these. May we approach the bench, your Honor?

The Court: Sure.

(The following proceedings took place at the bench, not in the hearing of the jury.)

Mr. Hallinan: This is obviously rebuttal on the painting. There is nothing to rebut. My question is not evidence. Mr. Miller denied it.

The Court: What about that?

Mr. Perry: This is the picture. We want to put it in evidence and show that the whole fabric of Mishel's testimony is false.

The Court: He did not testify about this.

Mr. Perry: But he has testified about being in the deal with Miller.

The Court: I do not think he said anything about the

picture. He asked Mr. Miller about it and is bound by his testimony, as I see it.

Mr. Perry: I have been in and out of court and I lost track of some of the links.

(To Mr. Rosenblum) How was this painting brought out, Mr. Rosenblum?

(1359) Mr. Rosenblum: I think Mr. Hallinan questioned him, questioned Miller, about Mishel bringing some painting to him and trying to get a loan on it.

The Court: He said he did not.

Mr. Rosenblum: What?

The Court: Mr. Miller denied that Mishel gave him any painting. He said he brought it to the bank for the purpose of a loan.

Mr. Rosenblum: I think he said he did not give him a loan.

The Court: He tried to get a loan on it, but Mr. Hallinan did not get what he wanted. He is bound by Miller's testimony. We don't need to go any further on the subject.

Mr. Rosenblum: I see.

The Court: It is a collateral question. He could not put this in if it would help him.

(Proceedings resumed within the hearing of the jury as follows.)

Mr. Perry: In view of your Honor's ruling and Mr. Hallinan's objection, we have no further questions to ask this witness.

The Court: Thank you, Mr. Rayburn.

(Witness excused.)

(1360) Mr. Rosenblum: The defendant rests.

The Court: Does the Government rest?

Mr. Hallinan: The Government rests, your Honor.

The Court: I will excuse the jury until 10.30 tomorrow morning, and don't discuss the case at this time. Be very

careful on it. Do that. Don't let anybody discuss it with you.

(Jury leaves courtroom.)

The Court: All right. Do you want to renew your motions, Mr. Perry?

Mr. Perry: Your Honor, we are in somewhat a better position at this time. We have given your Honor a couple of briefs. But at the close of the entire case, your Honor, the defendant moves for a judgment of acquittal on the grounds that we have urged at the end of the Government's case, to wit, first of all, your Honor, we say the Government has failed to establish a prima facie case in that it has failed to establish, first of all, that the bank was a paying agent, secondly, it has failed to establish that this was a matter within the jurisdiction of the Fiscal Service of the Treasury Department, which element is a prerequisite to the establishment of a prima facie (1361) case.

Our second ground for asking for a judgment of acquittal, your Honor, is that the venue of this action is improperly laid in the Southern District; it should be laid either in Chicago or Washington, D. C., where the letters were received, the three letters that are the basis of the first, second and third counts.

In passing, I wish to note to your Honor there is no question about waiving that right to claim fault of venue because we did not get the information on which this motion is based actually until the opening of the Government's case when we found out the theory of the case. We did not know before that it was based on letters, oral testimony or a combination of both.

The third ground for judgment of acquittal, your Honor, is that the first and second counts as charged in the indictments are not supported by the alleged false statements that were made.

Renewal of Motion for Judgment of Acquittal

(1362) I have references to the letters of December 26, 1951, which is the basis of the first count, and April 4, 1952, which is the basis of the second count.

In the brief that has been served upon your Honor and upon Mr. Hallinan, we pointed out that the crime of false statements is in essence a variation of the crime of perjury—they are both the same, actually—and that a crime of perjury would be based on the alleged perjurious statement. As far as the first count is concerned, the alleged false statement is that we were informed by the bonds were cashed. That is the letter. The charge is that the statement was an affirmative statement that the bonds were cashed in accordance with the procedures.

I say the crime, if it is a crime, as proven by the letter of December 26 is certainly not the crime, the alleged crime, as charged. To that extent, the proof does not support the count and there should be a judgment of acquittal as to the first count.

The same reason applies to the second, because therein the charge is, "We believe," and whether or not there would be a false statement there would be contingent upon whether that belief is false. That is not the crime charged in the second count which charges a flat statement (1363) that the bonds were properly cashed.

For those reasons, your Honor, I feel that the entire Government's case should be set aside and the defendant acquitted, and, in particular, I directed my latter motions with respect to the first and second counts. In any event, the proof does not support those counts.

The Court: Do you have anything you want to add, Mr. Hallinan, to what you said?

Mr. Hallinan: No, I do not, your Honor.

The Court: Well, I am going to reserve decision on your motion. I will decide it tomorrow morning the first thing. I would like to look into a few things.

Just so no one will be caught unprepared, my tentative feeling is that I am going to deny it, so that we will go ahead and go to the jury on all three counts. So both of you be ready to sum up on the three counts. If I conclude contrary between now and tomorrow morning, I will make an apropriate disposition of the motion at that time. Don't let me forget to dispose of the motion.

Mr. Perry: Do you plan summations tomorrow?

The Court: We will sum up tomorrow. Do you want two hours?

(1364) Mr. Rosenblum: I don't know. You said I could take the morning and then Mr. Hallinan will take the afternoon. If I should finish much before, then you can make such adjustments. I haven't figured the time.

The Court: I would then consider giving the case to the jury tomorrow. If you could sum up in an hour, fine.

Mr. Rosenblum: I couldn't.

The Court: I don't like to give a case to a jury in the afternoon.

Mr. Rosenblum: We have been moving so quickly.

The Court: I would guess you want an hour, an hour and a half.

Mr. Rosenblum: Two; it may go a little more, a little less.

The Court: As an outside limit, I will fix two hours for both. In other words, I will stop you if you exceed two hours. We will take an hour, a ten minute recess, an hour, you in the morning and Mr. Hallinan in the afternoon, and I will charge on Friday.

Mr. Rosenblum: We will have two hours and ten minutes in the morning?

The Court: Ten minutes will be the jury's recess. (1365) You should be through by 12.40.

Mr. Hallinan: I have one more matter, your Honor. I forgot to do it.

The Government is going to move now to strike the redemption forms—what is the number of the exhibit?

The Clerk: C for identification.

Mr. Hallinan: C for identification on the grounds that at the time——

Mr. Perry: D is in. C for identification. C is in, isn't it?

The Clerk: No.

The Court: Frankly, I am not sure. We will find out.

The Clerk: C is identified. C-1 and then through to 43 we pre-marked.

Mr. Hallinan: C-1 is the huge batch.

The Clerk: C is the batch of them.

Mr. Hallinan: Then the photostatic copies, your Honor ruled on that, and it was not admitted.

The Court: Wait a minute. It seems to me at one point D was in or on the brink of going in.

Mr. Perry: It was in. The D batch went in. The problem was when I offered specific ones of the big batch, because the big batch was used in cross-examination (1366) by Mr. Hallinan and used on direct examination by me.

Mr. Hallinan: Just about four of them.

Mr. Perry: You used some of them.

The Court: What do you have?

The Clerk: I have C for identification. Then I started to pre-mark C-1 through C-43.

The Court: You started to go through C, didn't you, to mark specific ones?

Mr. Perry: Judge, here is my recollection. I do know during Mr. Brennan's testimony I offered the entire bunch of these then. It was my impression that they were received. In fact, I think Mr. Hallinan made no objection.

The Court: I think you are right.

Mr. Perry: Then after that, your Honor, Mr. Hallinan used a part of it—four, he says. I don't know how many—to examine Mr. Brennan on, four of the batch.

I tried to take single ones out of the big batch and that was where your Honor——

The Court: You had photostats?

Mr. Perry: Yes, Judge. Then I said I would have the originals marked in place of the photostats.

Mr. Hallinan: My motion is addressed to this. When I first——

(1367) The Court: "This" being C?

Mr. Hallinan: Yes, C. When I first did not object, I anticipated—I knew what the purpose of these was going to be—to try to make out a practice. They had the testimony of the witness Brennan as to a practice.

Now, I thought they were going to call people who could identify these. I went through the ones that Brennan could identify and had his initials on, yes. The rest I didn't. I think this batch now of and by itself without the testimony of the tellers who actually handled these transactions is meaningless, and the batch that you have here is just going to be very confusing to the jury. They have the testimony of witnesses as to the practice and procedure with respect to the cashing of bonds. That I have no objection to.

The Court: Certainly if I were ruling on the question de novo I would go along with you and I would not receive it.

Now, has any prejudice been done by having it come in and then striking it out, and, if so, can we repair it? Is there any testimony of Brennan you want stricken?

Mr. Perry: I am frankly at a loss. Mr. Hallinan admits he consented to admitting these, and then he used some of these. Whether he used four or forty (1368) is immaterial.

Mr. Hallinan: Four that had his initials on.

Mr. Perry: Whether he used 1 of them or a hundred of them, it makes no difference. The fact is you used items which were offered in evidence and received in evidence over no objection from you. You used it on cross-examination of the defendant's witness, and now we are faced with your saying you want to move to strike them out.

Mr. Hallinan: Yes, because there is nothing added to those that makes any sense with those.

Mr. Perry: I think the best evidence of any practice are the forms themselves.

Mr. Hallinan: That is precisely my point, your Honor.

The Court: I think that I will strike them as I will strike the answers of Brennan with respect to the four you cross-examined him about, if there were four, whatever they were. My own feeling was that the entire testimony with respect to them was of no great impact on anybody in the courtroom, and I do think that that mass of paper can only bring confusion and does not help us with respect to the material issues in the case. So I will strike them from the record.

(1369) Mr. Perry: May it be noted, your Honor, that we feel this does seriously prejudice the case because you may strike it from the record but I respectfully suggest we cannot readily strike it from the jury's mind as to these individuals.

The Court: I will give them any instructions you wish without commiting you to agreeing with my ruling. In other words, you oppose my ruling, but now my having ruled, I will give whatever instructions you feel will mitigate any prejudice to your side of the case as you see it.

Mr. Perry: Judge, I will examine the records with that in mind. I do not feel, your Honor, we can undue the damage in that way. If your Honor were to rule or if your Honor does rule, then I would ask for a mistrial.

The Court: My own feeling would be that they are not worth giving any instructions for. I do not think the jury has any comprehension of them and, therefore, any instructions would probably be just a waste because I don't, as I said, believe they made any impression on the jury; but if, as you look over the record, you see there is something you would like me to instruct them on, I would be glad to put it in.

Motion for Mistrial—Denied

Denial of Motion for Judgment of Acquittal

(1370) Mr. Perry: I will do that in any regard because your Honor may do that even though I disagreed with your ruling.

The Court: When we come back tomorrow morning, you call my attention to whatever you want me to do.

Mr. Perry: In any event, your Honor, in the face of your ruling, we will move for a mistrial.

The Court: I deny your motion.

(Defendant's Exhibit C withdrawn.)

The Court: Anything else?

Mr. Hallinan: No.

(Adjourned to 10.30 a. m., November 1, 1956.)

(1371)

New York, November 1, 1956;
10.30 o'clock a. m.

Trial resumed.

(The following proceedings in open court in the absence of the jury.)

The Court: One of the jurors was delayed and that is why we are a little late, but we won't cut down on the time.

I will rule now on the motion. I deny the motions which the defendant has made. I don't think I need to comment. At one point I think I said something about the failure to make the motion directed to venue earlier. I think I said, "Well, in any event, that is not crucial." As I read the cases, I think there was a waiver. In other words, I think venue here is proper anyhow. But I didn't want to have

anything I have said to suggest that I think that the motion was timely. I don't think it was. It could certainly have been made after the Government's opening, and I think that the letters which had been furnished before trial, coupled with the (1372) indictment and the dates in the indictment, put the defendant on notice as to what the representations relied on were. So I just want to add that to correct any misconception as to my position.

Mr. Perry: Just so our position is clear in that respect also, I remind your Honor, you say that we should have been put on notice by the dates of the letters, I remind your Honor that the allegations in the indictment are not the same allegations as appear in the letters, so that actually, I respectfully submit, that there was no being put on notice as to exactly where the charges emanated.

The Court: I will disagree with you on that. But we won't educate each other very much at this point by continuing to talk about it.

Mr. Hallinan: Your Honor, before the jury is brought in, may I make just a brief statement for the record, please?

The Court: Yes.

Mr. Hallinan: It has to do with Irving Mickey Rosenberg. I want the record to indicate that this is more in the nature of putting Mr. Rosenberg on notice. I informed Mr. Rosenblum on September 19, 1956 that the Government felt it could not call (1373) Rosenberg as a witness because he was then named in an Indictment C. 143-116, which I have called to your Honor's attention, where he was named as a co-conspirator with the defendant James W. Miller and other persons. At that time I furnished the telephone number of Mr. Rosenberg's attorney to Mr. Rosenblum, and since then I have learned that they have interviewed him.

Now, I just want to put Mr. Rosenblum on notice that if any remarks are made about Mr. Rosenberg's absence since he has been on notice since September 19 as to the Government's reasons for not calling him and that he was available—we made available the telephone number to Mr. Rosenblum—I will be fully prepared to answer it in my summation.

Mr. Rosenblum: I would like to say this, your Honor. I don't think I should be limited or cannot possibly be limited. Let us get this fact straight. Mr. Hallinan knows that no one in this world could have stopped him from calling him. He called Mishel, who was in that same indictment. Mishel at one time refused to answer certion questions. Rosenberg could have refused to answer certain questions.

(1374) Now, I make it more forcefully for this reason: It so happens he asked a question. I tried to get every witness I could into my office, talk with them. Siegel wouldn't come down, so I couldn't get him. Mr. Schnabel I was able to get. Rosenberg came down.

Now, he asked a question: Did you ever see Mr. Rosenberg? Mr. Miller truthfully said he saw him in my office. This jury is going to infer that if I had him in my office and I didn't call him there must be a reason I didn't call him.

Now, if the statement was correct that they could not call him, then I would say maybe there is even some basis to it. If a man is indicted, all he has to do is say, "I refuse to answer."

They could have called him and if he agreed to answer questions——

The Court: I do not understand that Mr. Hallinan is going to make any argument that you, by failing to call Mr. Rosenberg, are admitting or a failure to produce a witness is unfavorable to you. He wants to make sure you do not make an argument against him.

Mr. Rosenblum: I will make that argument. (1375) I will say if a witness is not called, let them give it such consideration as they think it deserves, because otherwise since he was in my office——

Mr. Hallinan: I say he was available to Mr. Rosenblum.

Mr. Rosenblum: All right, you can say that, if that is your only point, but when he puts me on notice that he couldn't call him—he makes the statement he couldn't call him, that is not a correct statement.

Mr. Hallinan: It is.

Mr. Rosenblum: It isn't. If a man answers questions, he can take his testimony. If, on the other hand, the man asserts his privilege against self-incrimination, then that is his job to do it.

Mr. Hallinan: The Second Circuit says we should not call a witness where he is going to invoke the Fifth Amendment.

Mr. Rosenblum: That is your problem.

Mr. Hallinan: That is the reason I could not call him. I did not want this other indictment to go puff, like that (snaps fingers).

Mr. Rosenblum: I am in the same position. (1376) You asked me to come down. I will come down and speak to you, but let us assume he had said, "I refuse. I invoke" —how can I get that across to the jury? My feeling is, and I think this may very well turn this case, and I say it very candidly, because here a record has been made by Mr. Hallinan that he places Mr. Rosenberg in my office——

The Court: He did not put Mr. Rosenberg in your office.

Mr. Rosenblum: He did, by the question he asked. I will give you the page if you want, your Honor. He said to Mr. Miller: "Did you ever see Mr. Rosenberg before this occasion when he was introduced to you at the time the Chernoff bonds were brought to you?"

"No sir."

"Did you ever see him since then?"

He said, "I saw him,"—first he said, "Rosenberg"—"Mr. Rosenblum's office."

So he brings out that he places him in my office. You know what the thinking of this jury would be. Why didn't I call him. That is so. I have got to meet that. I can't permit this jury to go away with the thought that I did not call him (1377) because he may have said something to me. I say right now what he said to me I think would have been helpful to me and we told that to Mr. Hallinan yesterday. Mr. Perry told him that yesterday.

Mr. Hallinan: I will also state for the record at this time that Mr. Rosenberg denied to me and denied to the Secret Service and the FBI and Mr. Malinky personally apart from other FBI agents that he was ever introduced as Nat Chernoff to Mr. Miller.

Mr. Rosenblum: He told me that that is the only occasion——

Mr. Hallinan: I am afraid of putting him in a position where the other indictment might be——

Mr. Rosenblum: I will state as an officer of the court that he was ready to testify he was introduced at that time when the testimony shows he was brought to Mr. Miller.

The Court: I will tell you both I do not see anything in this record as a basis for saying anything about what Mr. Rosenberg said to either of you.

Mr. Rosenblum: That I agree.

The Court: As to why he was not called, (1378) I do not see that there is any basis laid for arguing that either of you had the duty to call him or that an inference must be drawn one way or the other. If one of you goes into it, why, of course the other one will follow. I actually don't see on the record of this case any basis for arguing an inference one way or the other. That is the way it looks to me.

Do you feel you must bring that out?

Mr. Rosenblum: I feel very keenly that this jury are human beings. All they heard was that he was in my office. It naturally must follow if I did not call him he must have said something to me I did not like, and that does not happen to be the fact. I can state some other things he would have said, but I do not want to go into that.

The Court: I do not know what you are going to argue on the thing because there is nothing in the record to show why you did not call him.

Mr. Rosenblum: Of course not. That is the trouble. If we say nothing to them—there was nothing said about him being at their office.

The Court: You cannot say anything that is not supported by the record.

(1379) Mr. Rosenblum: I am only going to say it is up to them to draw any inference they care to and he can say the same thing, I suppose.

Mr. Hallinan: I am a little confused. The record reflects from Mr. Miller's answer that Mr. Miller saw him at Rosenberg's office.

The Court: The word was "Rosenberg." I thought there was a mistake, but then I thought maybe it was Rosenberg, so I kept my mouth shut.

Mr. Rosenblum: I am very happy that Mr. Miller had the good sense, and I know he is the kind of person who would answer the question truthfully, and that is why I think he said "Rosenberg." When he said it, he pointed over to me.

Mr. Hallinan: I do not remember that.

Mr. Rosenblum: It is quite clear, Judge. I will do this: If we can advise the jury—if that is agreeable to the Court—that the answer was, "Rosenberg," and does not mean me, that is all right with me. I wouldn't even be a

party to it, to tell you frankly, because I don't think I have a right to.

(1380) Mr. Hallinan: the record indicates very clearly what the answer was.

The Court: Do either of you want me to rule on anything?

Mr. Hallinan: No. I just wanted to put Mr. Rosenblum on notice.

The Court: All right. Go ahead.

Mr. Perry: All I was going to say, in view of your Honor's ruling in connection with the redemption forms you asked me if I would come in and you would strike it out—Mr. Rosenblum has had the minutes and I haven't had them—but I will call it to your Honor's attention before Mr. Hallinan sums up and ask you to strike out certain portions of the testimony.

The Court: Actually, the question he asked about were Mishel's accounts which in themselves would have had a relationship——

Mr. Perry: Who asked about?

The Court: Mr. Hallinan asked about the opening of the Helen Mishel account. When he cross-examined Brennan——

Mr. Hallinan: Yes, sir. I will say that was from that batch, about four or five, I believe, redemption forms that had his initials on them.

(1381) The Court: But didn't have any other connection with Mishel's case.

Mr. Perry: No, Judge.

The Court: Any questions as to the non Mishel redemption, any answer on the Mishel redemption slips should go out, I think.

Mr. Perry: Yes.

Mr. Hallinan: If I do refer to it I will just refer to the general testimony and practice.

Mr. Rosenblum: In connection with the other matter, I don't know that there is anything in this record which indicates that there is any basis that Mr. Hallinan knew that if Mr. Rosenberg were called that he would assert the Fifth Amendment, because he might not have.

The Court: I think that there is strong doubt as to the propriety of the United States Attorney calling any person under indictment as a witness in this case, I mean, under an indictment in its own office.

Mr. Hallinan: That was the primary fear.

Mr. Rosenblum: He did that in this case.

The Court: There was no compulsion, as far as I know.

Mr. Rosenblum: No. He did it in this case.

(1382) The Court: Look, Mr. Rosenblum——

Mr. Rosenblum: He called Mr. Mishel.

The Court: You cannot in any way argue against Mr. Hallinan Mr. Rosenberg's failure to walk into court voluntarily and testify, where Mr. Hallinan can't call on the sanction of this Court to compel the attendance of a witness; if he had asked me to compel Rosenberg to testify I wouldn't have done so. In other words, to me, a defendant in a criminal case has to come in voluntarily and testify or he doesn't come in. If he won't come in I won't make him come in. But where the subject matter is at all related, and I am not sure——

Mr. Rosenblum: I could say that if he had called Mr. Rosenberg, from what I know, Mr. Rosenberg would have come in and testified.

The Court: There is absolutely nothing in the record to show that.

Mr. Rosenblum: That is right.

The Court: We can argue on that.

Mr. Rosenblum: He put me on notice as to certain things, he has put me on notice. I want to say that I am an officer of this court and also——

The Court: There is a big difference between being put on notice as to an indictment pending in my (1383) own court and being put on notice as to an oral conversation you had in your office.

Mr. Rosenblum: Remember, he made this record here. He makes the record that there were three people brought money to Miller, and he calls two. Maybe he should have been careful not to put in any testimony as to the third. How can he on one hand put in the testimony by saying Mishel testified Schnabel brought money to Mr. Miller, Mr. Siegel brought money to Miller, Rosenberg brought money? He knows, then, that there isn't any way that he can try Rosenberg the same as he does the others, if that is his thinking that he couldn't bring him in.

Mr. Hallinan: There is a very good reason. Mr. Rosenberg, for reasons best known to himself, and completely understandable to me, says he didn't know Miller. He is named in a conspiracy count with Miller. Of course he doesn't want to know Miller. There are very good reasons why——

Mr. Rosenblum: For your information, your Honor, Mr. Rosenberg was in here and interviewed by Mr. Hallinan.

Mr. Hallinan: He was.

Mr. Rosenblum: Just a moment. And was forced, required to answer certain questions.

(1384) Mr. Hallinan: No forced, no.

Mr. Rosenblum: Oh, no. If you want to get a picture in, let us get it complete.

The Court: We will go along now and get the jury in. I just caution you both not to go beyond the record.

Mr. Hallinan: Your Honor, before they come in here are the requests to charge.

(Jury in box.)

Summation on Behalf of Defendant

The Court: All right, Mr. Rosenblum. I guess we can go ahead.

Mr. Rosenblum: May it please the Court, Mr. Hallinan, Mr. Foreman, ladies and gentlemen of this jury.

In the thirty-three years that I have been in this business, prosecuting and defending, I don't think I have ever had a feeling that I have in this case, that vagueness of feeling that I can't put my fingers on those things that I would love to in such a way that you could be certain that you are getting the assistance you need in trying to determine what the facts are in this case. It is principally due to the fact that I have to rely, of course, upon the record, and the answers which I get from the principal witnesses for the Government, "That maybe (1385) it is 46, 47, maybe 48, maybe something happened in 49." You get the feeling that you can't put your fingers in so that you could say to the jury, "Look, here is something. Here is where I can show you that he lied." And particularly that is true in these instances where there isn't another witness that you could say anything. He could say anything, ladies and gentlemen; he could accuse me, he could accuse you, he could accuse his Honor, he could accuse the District Attorney. He could do anything. He says, "This is what I say."

It is a question as to whether there is enough there to really support the statements and the accusations that he makes. I say it is so frustrating, so hard not to be able to put your fingers on something that you would love to, so that you could say to a jury, "Look, every incident that he took, every time that he took a position on something, I can show you just what I have, I have another witness, or I have a certain bit of proof in the form of a document or something." Now, we have some, thank God, and I think we have enough possibly to satisfy you as to what weight you should give to this witness. It is frustrating.

I forgot something. I usually thank a jury for being patient, but I forgot. I get all wound up. (1386) I do appreciate the extreme close attention that I noticed every one of you gave in this case. I don't like to go into anything more than that.

I say it is so frustrating. Even you take right now, you heard about five $1,000 Missouri Pacific bonds. The way Mr. Mishel said it he could leave the impression they were hot, stolen, warm, as he put it long—he used a lot of expressions. To this minute you never knew whether they were stolen bonds or they weren't stolen bonds. It would seem from the proof, the way it was put in by the Government, that all you had to do was to make a phone call. And I would like to know why, up to this very minute neither Mr. Hallinan nor Mr. Milenky, whom I have known, I have known Mr. Milenky for close to twenty years, twenty-five years, an experienced and able man, didn't take the precaution or didn't make the effort to see if they couldn't determine whether or not those five $1000 Missouri Pacific bonds were stolen.

Don't you think you ought to know that? Don't you think you would like to know that? Are you going to rely upon Mishel saying, "I said to Mr. Miller, 'It's long, or it's a little warm'"? To this very moment we are trying to get the facts and get at the truth in the picture.

(1387) Why is it that when Mr. Miller was on the stand Mr. Hallinan didn't say to him, "I direct your attention," and bring out from him, "That these things were stolen"? Particularly if it is easy to make a telephone call. You take the same thing with that $5000 Government bond which was cashed. I would love to know. There isn't a word in this record other than Mr. Mishel about his having, I think he used some language similar to the "warm" or "hot" or something. But he brought out that Miller said, "Give me the numbers," and all that sort of stuff.

And he talked about the deal, you remember, with Gude Winmill, a stock exchange house.

Don't you think that if it is possible to get that information and if it is easy to get it there would be an effort made to get it? Why is it that to this moment no books were produced by Mr. Hallinan or information from Mr. Milanky so that we can bring before you ladies and gentlemen the facts as to whether it was or was not stolen? It is very easy for a witness to say things but it is another thing after that to put your hands on it. See whether or not it stands up when you give it that scrutiny which it deserves to get. In particular, if it were easy to get that information.

(1388) Now you know, ladies and gentlemen, that the charge in this case is making false statements. As a practical matter you know that what the Government is really charging is that the essence of this crime is whether or not Mr. Miller was a partner of Mr. Mishel. That is the heart of this crime.

Mr. Hallinan: I will object to that, your Honor.

The Court. I will let counsel argue.

Mr. Rosenblum: Well, let me read to you what Mr. Hallinan said, and see if I misstated something to you. At Page 8 of this record.

"Mr. Hallinan:—" I am quoting word for word—"The essence of this case is the relationship between Irving Mishel and James W. Miller."

I don't think I was misleading you ladies and gentlemen. And then he goes on to say that there was a place and a time when this criminal conspiracy was born.

Right, Mr. Hallinan?

Mr. Hallinan: You can stop that right now, Mr. Rosenblum. Your Honor——

Mr. Rosenblum: All right.

Mr. Hallinan: Your Honor, addressing remarks to me——

Mr. Rosenblum: All right. I won't do it again.

(1389) The Court: Both of you are good lawyers and have done a good job. Go ahead and tell the jury what this case is about and quit this friction back and forth.

Mr. Rosenblum: He went on to say to you—again I am reading, although I transcribed it on a sheet of paper earlier this morning, about 3 or 4 o'clock—at a meeting in Gallagher's office Gallagher said to Mishel, "I know about you and your connections, and anything you want to do, legitimate or illegitimate, is all right with me."

And he then said to Miller, "If I am not here, Jim, you can take care of it."

I am now giving you from the record what was stated to you by Mr. Hallinan in his opening statement. So I say that that is the heart and the essence of this case. In fact, the testimony in this case, is from the dates that Mr. Mishel gave as to when he said he advised the authorities of all that he has testified, 1952, there was sufficient time to indict Mr. Miller on the principal phase of this case that he assisted, he conspired, that he uttered forged instruments. What are we doing, waiting six years? So you can catch a man by the heel and say on some technicality, "You used (1390) these words in a letter"? And that wasn't done.

Now, when Mr. Mishel took the stand he did reaffirm in some slightly different language about the meeting at which this criminal conspiracy came into being. I tell you, I asked him, "When". "Well, it was either 46, 47, 48." Once he said, "Maybe the early part of 48." And I think at one point I said, "Possibly 1949?" "Maybe I would say 48."

Take even three years. Do you really think or could you possibly believe that a thing as important as that Mr. Mishel didn't know?

Mr. McAvinue, a lawyer, with fourteen years as a prosecuting attorney, who worked and prepared this case for the District Attorney's office, told you yesterday that Mr. Mishel never told him of a meeting in Gallagher's office. And the terrific cross-examination to break him down was "no questions."

Don't you think Mr. McAvinue would be asked and the records could be obtained to show whether or not he was told. That he was lying about it? First consider all those elements.

I couldn't get him to give us an answer as to time, I couldn't get him to fix some circumstance, other than the fact that he said it was in Gallagher's (1391) office. But he wants you to believe and accept that that is the date and that is the time the conspiracy was born, if there was ever a conspiracy came into being.

And you may remember, because it is in the record, and if I am wrong Mr. Hallinan will bring it to your attention that I am wrong, and I don't know if you realize that, even though we had it fixed—he gave the time, the meeting in Mr. Gallagher's office, that is, 1946, 1947, 1948, and once he said he thought something about 1949. So you have a right to assume he followed what Mr. Hallinan told you in his opening was the date when this thing started. But do you know, if you analyze the record carefully, he says, "I was doing business with Miller before that time". (1392) That's his testimony. And I will show you how and when. It is in the record.

Do you remember I asked him to tell me all that he knew about his dealings with Mr. Miller, anything? You should know what I am asking. At least I hope so. And when he says something about "burnt money," he said, "That was before the meeting in Gallagher's office."

If I can get the page for you, I will have it for you, but I say to you right now that is the fact. That is in

the record. I don't want to take the time. My assistants may check it for me in the meanwhile.

I asked him when. He quibbled and he said before the meeting in Mr. Gallagher's office that he described, that he had a deal when Mr. Mishel says he brought in burnt money. I asked him, "What's wrong? Take a dollar bill. If it is burnt around the edges, you have a right to get new money. What does that mean?"

He said, "But not if you pay a fellow 10 per cent."

That is in the record. What is the truth? I say the truth is that neither of those things (1393) ever occurred, but he is ready and willing to say anything so long as he can get paid off when the day comes and he can be compensated for what he feels he has done. He told you he is hopeful. Do you really think he is doing it because he suddenly became a good, clean citizen and wanted to cleanse his soul? So that we start off practically at the beginning—he gives you the date of the conspiracy and we can all stand on our heads and you will never get a date other than that '46, '47 or '48.

Now keep in mind, as often has been said, give me a little piece of paper with ten words on it, but that is something in writing, and I will match it up against ten thousand or a hundred thousand words that someone can say. It is something that is definite. I will show you some things that are definite. So that I say to you ladies and gentlemen that if the essence in this case is really whether there was the partnership between Mishel, Miller and Gallagher, that if that falls, if you are not satisfied that that is so, this case should fall.

Now I think the best way that I can treat with that is to see what he has told us about the (1394) transactions that he has said he has had with Mr. Miller. If you recall—and also I say that that falls—when I said if you

are not satisfied with the fact that they are partners in crime, because, remember, the Government's position is, from the opening that was given to you, since they say the essence is a relationship between Mr. Miller and Mr. Mishel and the charge is making false statements, then you have to give Mr. Mishel's testimony that weight which would satisfy you that the statements made which were false were done to deceive the Government and done wilfully and were done purposely because he was a partner of his. So, you see, it ties into this entire matter, this entire picture. If you want to take the cold words as to whether or not the words were used properly or improperly, whether they were artfully used, I will treat with that later on, anyway.

So I think let us go for a moment to—I already covered the Gallagher thing. I might also point out, can it be that Mr. Mishel didn't tell Mr. McAvinue back in 1952 when he talked with him about this Gallagher so-called meeting when the conspiracy was supposed to be set up because Mr. (1395) Gallagher was alive and there would be another person to deny it? Mr. Gallagher died recently. It is right in the record. A pretty smart cookie, that fellow Mishel. He knows there isn't another witness. You watch and analyze all the things he has said and see whether you dare or should destroy a human being, a good, fine person, on Mr. Mishel's say so.

You recall I said in connection with the five $1000 Missouri Pacific bonds he left the impression there was something wrong. You ladies and gentlemen were led to believe it was part of the deal. You know, there isn't a word in the testimony that he said he gave Mr. Miller something. But analyze how clever he was. You think to yourselves whether you didn't have the impression that what he was saying was that there were five $1000 Missouri Pacific

bonds that had been put up as collateral which were stolen, forged, hot, warm, or whatever expressions he used. If you look at the testimony carefully, he doesn't say it but he leaves that impression of his dealings with Mr. Miller. And he never says—let's say that he gave him 10 per cent, 2 per cent, 30 per cent or a hundred percent. (1396) But if you analyze it, what was the deal? Let us assume they were stolen. He says he came in and he wanted to borrow $1300. He needed collateral, so he brought in collateral. It was put there on, I think it is, a 60 or 90-day loan, whatever was testified to. He paid off the loan, he got his bonds back. What is there about that that should in any way affect us? If anything, it just shows another transaction, legal, proper transaction, which took place, but you know best whether or not you were not led to believe that those bonds were crooked, were stolen or something.

Take the $500 bond. There he said that he paid Miller. Other than his word and his statement and his testimony that it was slightly long—I think he said slightly warm, indicating it was a hot bond, a stolen bond, and that Miller was engaged in an illegal transaction with him—outside of his word there isn't one bit of proof that that is so.

You remember yesterday I analyzed that and I took Mr. Miller right through the transaction. What did it show? That a man by the name of Mr. Littlefield who was discharged, who they discovered had been running a kite in the bank, handled that (1397) transaction from A to Z.

And I still say since he put in the words—"I called Mr. Miller and Mr. Miller said, 'Give me the numbers. I will call you right back.' He called back and said, 'I can take care of it for you.'"

What does it mean? Are you people just going to be deceived into believing from some impressions that have

been left that something is a fact? You are dealing with a human being here.

So that when he said tha , isn't it obvious he left the impression that Mr. Miller made a call some place and found out about—what is he going to find out? He found out that it's hot, that he wouldn't use it if he was a crook; right? Otherwise, what is he calling up for? Where could you call up? I asked him—no cross-examination—"Is there a place where you could call in order to get information?"

Those things are vital in a case to show you which way the truth really goes and in what direction you should consider and see who is telling the truth. Are we to say, then, that Gude Winmill, the stock exchange firm that cashed the $5000 bond, that they were in cahoots? Because if there was a (1398) place, they certainly, being in the business of buying and selling these things constantly—a bank has to go to them to make a sale—wouldn't they be the one who would check? And I still add to it on this one topic, and I will close with it, I don't know why to this very day—and I say you ladies and gentlemen are entitled to get it—we don't have proof as to whether that was a stolen bond or it wasn't a stolen bond. Because if it was a stolen bond, you would at least in some way be able—other than the statement of Mr. Mishel, because that could be proved. In the six years they have been investigating this case, they certainly could have found out whether it was stolen or not, and I say to you if that was stolen you would have heard it and you would have heard proof of it. So they want to rely upon the word of Mr. Mishel that he said, "It is hot and I gave Miller 10 per cent," because if it wasn't hot, why should he give him 10 per cent? He could go into a bank. Remember, they were giving him credit up to as much as thirty, thirty-five thousand dollars. A man couldn't

come in and bring in a Government security and get his money? It is just incredible that you ladies and gentlemen here (1399) have to sit now and wonder whether or not that was or was not a stolen security or a stolen Government savings bond. If it was, you would have had that testimony, you can be sure.

As to the burnt money, at page 343 Mr. Mishel testified, after we bring to his attention in the middle of the page about the meeting with Gallagher and Miller when the criminal conspiracy was supposed to have come into being. He says, "I recall that conversation.

"Q. Do you say that those things which you have testified about that occurred, which you say, were illegal, were done pursuant to that talk? A. They were done before that, too.

"Q. It was done before that? In other words, you say that you didn't start doing anything which was improper or illegal with Miller until—I withdraw that.

"You say now that before the talk that you had with Gallagher you were doing things with Miller which were illegal? A. Before this talk with Gallagher?

"Q. Yes. A. Yes. . . ."

(1400) He goes on: "I had some burnt money that was taken out of the safe that was cashed there and I paid for the cashing of it."

You heard the testimony that the duty of the officers in the bank was if someone brings in money which couldn't be identified, you couldn't get anything for it. Those that you could give the Federal Reserve, you get money in its place.

Then he quibbles about whether it was before or after and he ends up—I say:

"Q. You said a moment ago you knew it was before. A. The conversation with Miller and Gallagher I had—from the day I went into the bank I had an okay there

to do what I wanted. The fellow that took me in got me an okay."

In other words, as I said before, it is in the record to show that before the Gallagher talk he is supposed to have been doing things with Mr. Miller or with Mr. Gallagher or whoever he was dong things with, and still you were given the testimony that the criminal conspiracy was supposed to have come into being at the time I indicated when he said he had the meeting with Gallagher and Miller, you remember, walked into the room.

(1401) Now, you heard the testimony in that regard from Miller.

And then he said that Mr. Wilmot handled the transaction. Mr. Wilmot was on that stand long after Mishel testified. You didn't hear a single question put to Mr. Wilmot with reference to the cashing of those bonds from which you can draw any basis in addition to what Mr. Mishel said, any basis that you can draw to satisfy you that that was an illegal transaction, and Mr. Wilmot was on that stand—you remember the man who was the head teller—and not one question was put to him.

So again I say as to that we have nothing but Mr. Mishel, who says that for getting the good money for the burnt money, the money which he could use, which—remember that the testimony was that money could be obtained from the Federal Reserve on that money which you could turn in because it is identifiable sufficiently so they can issue new money in its place, and why anybody in this world should believe that if you are legally entitled to it, if you are legally entitled to it, and there was no testimony to show that there was anything about that transaction which made it possible or made it (1402) necessary for Mr. Mishel to say that he had to pay off. I think he said the transaction involved $16,000. What part of that was approved we still don't know. There

has been no testimony about it. Who would have stopped anybody? If it is illegal or improper, if it is 10 cents or ten million dollars, you can't put it through. If it is something you are entitled to get—remember, this is at a time you are trusting the fellow and giving him loans up to $35,000. What would be the need? Why say to somebody—is it something you couldn't put through? Is it like, you say, a hot bond or an instrument that is forged that you are fearful it may be developed, it may come out somehow? This is money. Let us assume he got it from a safe that was cracked. How would anybody know that? What would be his need for telling anybody that if he was legally entitled and if he wasn't legally entitled to it, why didn't they bring it out when Mr. Miller was on the stand? He said Mr. Wilmot was handling it. Why didn't they establish anything from him which would help you to decide whether or not you can consider there was a real basis and a need to give 10 per cent? Mishel wasn't giving any money away. Of that you can be (1403) sure. He was taking it.

You know, ladies and gentlemen, when you analyze the transactions with the exception of the Chernoff bonds, which I will treat with later, these are the transactions he testified about. I asked him to tell me everything that he did.

Now, there was—yes, one other there was. There are two things, the Chernoff and the stiff accounts. I have a special topic on that which I will treat with you, but other than those two this covers the dealings which he says he had with Mr. Miller.

Now, there was much made—they read to you from an examination before trial in the Rialto matter as to whether or not Mr. Miller said that he didn't remember Schnabel at that time and here he said he did remember him. It would appear as though the record was clear that

he came in here and said, "Yes, I knew Mr. Schnabel and I have always known him. I always knew who he was."

Then Mr. Hallinan brings to his attention, "But when you were examined in the Rialto case you said, when they asked you if you know Mr. Schnabel, the answer was no."

(1404) Let us see whether there is something in the record, something which I think was brought out by Mr. Hallinan, which gives you a reason why he said, "yes."

During the cross-examination of Miller by Mr. Hallinan the answer was, "I don't recall, no."

It refers to questions which were asked previously but I will read the part which follows that.

"But I do know that recently the name Norty Schnabel came up, and I asked Brennan, I said, 'Who is this Morty Schnabel.'"

This is what Mr. Hallinan is getting from Mr. Miller.

"And he said, 'Well, he is the fellow with a harelip, the big fat boy from Mishel's office.'

"Q. And that is what a few months back refreshed your recollection as to Norty Schnabel? A. Yes.

So that we have had reams and reams of testimony about his saying "No" on one occasion and "Yes" on another. Until I found that I didn't recall that there was an occasion when Mr. Hallinan had established by the questions that he put there (1405) was a basis it was recently, and Mr. Brennan was on that stand and that could have been brought out or he could have been questioned about that in greater detail but that is something which is in the record now as the basis why he knew the man.

I bring these things to your attention because there was so much said about it, reading it into the record, reading it to you, and from all the reading you get the impression that now he is saying, "I know Morty Schnabel" as though he has always known him and always remembered him

and at that time he said no, as though he lied at that time—either he is lying now or then.

When you look at the record, you have the part I just read to you when he gives the basis, the reason, the circumstances, when a short time back he said it was brought to his attention when he talked to Mr. Brennan. If they had any doubt about that, all they had to do was question Brennan or question Miller to get the details of it.

I say it because it is little implications like that which sometimes might have a serious effect when you consider what weight you wish to give to a witness' testimony.

(1406) In considering the weight that you want to give Mr. Mishel's testimony, there are a couple of points here I think I should bring to your attention. The record as it now stands is that Mr. Mishel said he had a safe deposit box with Mr. Gallagher and Mr. Miller, that he had access to it and that it was either Mr. Gallagher or Mr. Miller who had the other key. If you remember, he said, "Well, that was the kind of a bank you could walk into the safe deposit vault and do as you please."

You heard Mr. Brennan's testimony the guard has to open it just like they do in any other bank.

You recall that he said he came there and a box was taken out. That box was taken out and in its place he found a filing cabinet, a sort of filing cabinet, which was put in its place, a small one. The testimony, is, which has not been rebutted, that Mr. Miller said he has been with that branch since 1946, the day when the bank was opened, and that not a single box was ever removed. Do you think for a moment that the Government wouldn't know who put in those boxes so they can determine whether or not any was taken out? You saw the great detail they went to to find some infinitesimal detail which (1407) they thought was important. Do you think Mr. Malinky, as good an investigator as he is, wouldn't get in

touch with the company? Do you think that Mr. Miller could take a screwdriver and take out a box? And if there was anything to support it, I say I think it is their duty and their responsibility when it presents something to you which is possible of being looked into and determined, they have the responsibility to do so.

We know there are only certain safe companies. You go to the bank and you can quickly see who put them in. You can ask a question, you can ask Mr. Miller. And then all you have to do is to go to that company and say, "Did you take out a single box?"

Mr. Miller has sworn that not a single box has been removed, and I say to you it is their duty and responsibility before they permit a man like Mishel—they know him as well as you and I now know him—that before they permit a man like Mishel to make a statement as serious as that that is subject to being determined, that they have the duty and responsibility.

Remember one thing. There is no duty (1408) on the part of a prosecutor to get acquittals or convictions. His duty is to see that facts are adduced and it is a victory for him if it is an acquittal as much as it is a victory for him if there is a conviction if the Government has proved its case beyond all reasonable doubt. It is a victory If there isn't a conviction, it is still a victory because you know somebody has not been snared in by the testimony of Mishel so that a man and his family can be ruined.

I still say again they had a duty to find out about the Missouri bonds and also about the $5000 bonds so that you would know. And you ought to consider that when you are considering all the proof in this case.

Mr. Hallinan: I hate to object during a summation. I say we have gone just about as far as we should on the duty of a prosecutor, your Honor.

The Court: I think so. As a matter of fact, I think

I made my position clear in colloquy during the trial, that we were not going into certain lines of proof, and when you say that Mr. Hallinan presented certain things, I think you are doing an injustice. Those matters were gone into on your cross- (1409) examination.

You go ahead. I don't want to discuss the facts.

Mr. Roseblum: I don't think I agree with you as to that phase of it. These aren't items we covered.

Mr. Hallinan: It is, precisely.

The Court: I am talking about the safe deposit box.

Mr. Roseblum: You did not let me go beyond a certain point. He answered certain questions. I think I have a right to use them.

The Court: You don't have a right to say Mr. Hallinan presented it and he had a duty, therefore, to go ahead and investigate it and present proof on the subject.

Mr. Rosenblum: I think I have a right that the jury can draw any inference it wants. It is his witness, not my witness, who testified.

I also want to bring to your attention, you remember that Mr. Mishel said that the bonds, the Chernoff bonds, he gave to Mr. Miller and Mr. Miller put it in his desk, and then you heard the testimony that he had a key to his desk and there (1410) was another key in the duplicate rack right in that bank.

Can you imagine—are you ready to believe that Mr. Miller—let's assume if he were a crook—would take these forged Chernoff bonds and put them in his desk when there is a key available that can open his desk? Just give that some thought. See what consideration it is entitled to have in the light of the testimony that has been given here.

There is another thought that strikes me. Here is a man who has been a president of a bank, had 25 years' service with the bank. Can you imagine—take the Chernoff bonds. He—and I think everyone of us—knows,

whether it takes a week or a month or, as in this case, seven months, from your own experience you must know a day comes when, if you cash a stolen bond, the Government gets in touch with you and tells you. You try to think, does it make sense that a man in his position would permit a stolen bond to go through his own bank where he knows it must come back to plague him? Is the man a moron? Does he lack experience in what happens in these instances? Then he knows he is in a spot where he has to start explaining. (1411) Does it make sense? Just think of those things.

You might say, "All right, but he got five or six thousand dollars out of it."

Just figure with me for a moment. He had that $6684.50 face amount of bonds. He and Gallagher are supposed to be partners with Mr. Mishel. So their take would be $632 and some change—45 cents, I think. Split it in half and it will give you $330-odd as Mr. Miller's share. Add the $16 Mishel said when he let him keep $100 instead of the $84, the 10 per cent of the first bond cashed. So for $340-odd the president of a bank is going to put through hot bonds which must come back to plague him. Take 10 per cent. In your juryroom figure out that $6684.50, and you will see it comes to that $340-odd. Does it make sense? Is it logical? That is something you must, in your weighing the whole picture, see whether a man who has reached the point of being a president of a bank, a busy bank with two branches, for $330-odd, $340-odd, is going to put something through his own bank, foul the bank up, foul himself up, have to even get an answer if—would he put it through his own bank? (1412) Just as much as you can believe that if he was a crook he would permit anybody else to bring him envelopes with money. You think that out, too. Can you imagine it? He claims he met Miller at the Holland House, at Quo Vadis, a couple of times in the Time and

Life Building, where he paid him off, he met him in a restaurant, he met him at some bars and grills. Can you believe that he would say, "I will take money if you send it down with one of your messengers"?

Is is conceivable? Now Schnabel said he didn't know what was in it, so we have no proof as to that, but, of course, the inference is left there. Let us not fool ourselves about it.

Mr. Siegel said he brought it in on six occasions and he said he thinks on two or three occasions it may have been theatre tickets. This is in a period of two years. This is while he was employed. You look at the time he says he was employed there. And during that time he said six. I said, "Might it be more or less?"

He said, "Yes."

I said, "Would it be two or three occasions you brought money down?"

(1413) It is significant if you watch the testimony he said it was sealed. If you look at Mr. Mishel's testimony, he says sometimes it was sealed with the money, sometimes it was open. It is in the record. Mishel says sometimes it was open. Can you conceive or believe this either? The man should be in an insane asylum. If he is a crook, he is going to act like a crook. If Mishel is to be believed, then a payoff is being made to him on those two or three occasions that are left of Mr. Schnabel's in open envelopes, and Schnabel said they were sealed—no, in Siegel's case. Schnabel also said they were sealed. Mishel says sometimes they were open. It is right in the record.

And if he was meeting Mr. Miller—Mr. Miller said he never met him outside of the office. He said the Holland House. You look at his testimony. I asked him three or four questions. He said it might be, sure, and before you know it he was away from there. He gave a name. He said in the Time and Life Building, right in the

lobby. How do you prove a thing—how can I disprove a thing like that? You had the word of Mr. Miller, who said, "I never met him outside of the office."

(1414) And Mr. Mishel says, "I met him, I paid him money."

Why send it with messengers? Why send it in an open envelope, as Mishel said? Do people who are crooks act that way? If he is doing something that is all right with him, that it can be done with anybody that he pleases, he can bring in any of the messengers, just like he told you, if you remember, that Mr. Miller—here this is supposed to be a deal between Mishel and Miller with the Chernoff bonds, and when they go in the back and Rosenberg is supposed to be there, Mr. Miller is supposed to bend over his shoulder and say, "Don't sign it here; sign it here," as to the bonds, and then as to the redemption forms, "Don't sign it here, sign it here."

In other words, Rosenberg is in the deal now, too. And he is putting himself in a position where he is in a bank, going to go to a room near the vault, and he will say, "Sign it here, not there; sign it here, not there."

Anything can be said, but you have to weigh it to see whether you are ready, in the light of Mr. Mishel's testimony, to believe it.

Oh, yes, it strikes me. Do you remember (1415) there was Mr. Horan—that was the teller—who admitted he was short $700, and Mr. Miller, he said, had to do with his discharge, Mr. Horan who says that in a busy bank where he said there were hundreds—a teller has to handle hundreds of transactions, he remembers years later that he saw Mr. Rosenberg at Mr. Miller's desk.

Mr. Mishel testified himself that he was in the bank nearly every day and the tellers say they recall each time that Mishel was at a certain place sitting at the desk.

You know, they still hold jobs as bank employees. As far as Miss Graef is concerned, she said she was told by

Mr. Kennedy that Mr. Miller said cash these bonds and they were cashed. Mr. Lucey says he looked at the bond register and saw these bonds had been cashed before, so he cashed them. But Mr. Horan, who said things weren't running well for him at the end, there was some expression, things didn't go well, he couldn't hit it off, and he suddenly remembers some of these things. It is for you to say whether you think, in the light of the history, the timing and everything else that is involved here, whether or not a man could remember or (1415a) whether he is still hostile because he is bitter.

Also remember, too, it is so easy. These fellows, if they were careless or if they did things in a certain way—they are tellers—if they say, "We have the approval of an officer," it takes them off the hook. It takes them off the hook very quickly.

(1416) You remember, there is one other thing he said. See if this makes sense to you. Horan says that he received that redemption form. If you have Mishel's testimony read to you you will see that this testimony ends up, he says that the guard came back and said, "Horan doesn't want to cash the bonds," and then he came back again and then Mr. Miller, the second time, after that first trip, when he came back to him, he said he sent the bonds back again, he said, Mr. Miller is supposed to have said, "Tell him to take his hat and coat, go in the back and take his hat and coat; I am still the boss here."

Now, if you look at his testimony Mishel never says a word about redemption bond being sent over. There isn't a word about redemption bond. Mr. Horan talks about a redemption bond. And then he says that—and if you have that testimony read, if you want Mishel's testimony, I don't want to take the time, but it is in there——

Mr. Hallinan: I have to object again. I just ran across—it wasn't my recollection at all. Mr. Rosenblum

has just made the statement that Horan said there was $700 shortage in his account. There was no such statement made. There was $150 tops. That was Mr. Rosenblum's question. And if more references are going (1417) to be made to the record I think we ought to stick meticulously to the record.

Mr. Rosenblum: What page?

My recollection is that he agreed that they totaled $700.

Mr. Hallinan: It is right there in the record.

Mr. Perry: Just a minute.

The Court: His recollection is that he didn't dispute a figure but he never admitted that it totaled any amount. So we will go ahead.

Mr. Rosenblum: You say he didn't dispute a figure?

The Court: He didn't dispute a figure, whether it was $700 or not. I doubt if he ever admitted that——

Mr. Perry: No, but he did not dispute it, your Honor.

Mr. Rosenblum: "Q. Do you know whether or not over the period of fourteen months your shortages amounted to about $700? A. No, I didn't know that.

"Q. Do you know whether or not Mr. Brennan told you to resign or you would be fired? A. No. I asked Mr. Brennan, I told him I realized that I was having a lot of hard luck as far as working (1418) over the window goes.

"Q. You were having what? A. I was having a lot of hard luck over the window."

And then if you will continue you will see I asked him a question as to whether or not Mr. Miller had something to do with his resignng.

The Court: He wouldn't say that he had nothing to do with it. He never specified what.

Mr. Rosenblum: The testimony is that he didn't dispute that figure.

Mr. Hallnan: That is not the best point. He said,

"No, I did not know that." And that was dropped at that point.

The Court: Let us go ahead.

Mr. Rosenblum: He didn't deny it, I will put it that way. I have a right to interpret it. He didn't deny it.

The Court: You can say he didn't deny it.

Mr. Rosenblum: I forgot the point I was making. I will come back to it.

And he adds in another thing. He adds in that there was one redemption form he got finally that had the initials of Mr. Miller on, and that that redemption (1419) form disappeared because, as it was brought out, redemption forms are always available to Mr. Miller.

You know, at this very minute in this trial, and it was agreed that the redemption forms were available to Mr. Miller, you will find two redemption forms with J. M. on it, which was put on by Mr. Lucey. You find one by Graef, with the word "Miller" written on top. If his purpose was to take out and withdraw redemption forms that showed any association by him with these cashings, don't you think he would take out the two of Mr. Lucey's with the J. M. on it? Remember, the Government wrote a letter and said, "We find that certain bonds passed through your bank, and we are sending an agent over. Please collect the data for him." Wouldn't anybody expect Mr. Miller, if he was a crook and part of this deal, to say, "Wait a minute, I had better look to see what the documents are"? Look at the redemption forms and find that his name appears on three of them? Couldn't he get another one and put it in its place, or that they can't just disappear? What is there about a redemption form? There were pads all over the place. If he was with Mishel, as Mishel says they were friends, couldn't he get Mishel and say, "Your friend had better go ahead and prepare another one and sign another one"? (1420) You find that these redemption forms are there.

Summation on Behalf of Defendant

And all you have heard about the Thomas Young account. And it is very strange. It has not been explained at any time to my satisfaction. Three of them had the name Thomas Young on them. If Miller was in the deal concerning Thomas Young, as Mr. Hallinan has brought to your attention, don't you think those redemption forms would go out? They were available to him. He was told to check everything. I think one of the agents said they believed he had the redemption forms on his desk. Wouldn't he see to it that he would go so far as to see that the one, with the initial J. W. M. was taken out and another one had to be substituted because he got all eight? Don't you think that those redemptions would be in such shape and such a condition as would not involve him if he was a crook? We are human beings. We have to see how our minds work. Isn't that the normal thing? No. But you find those forms there just as they were. It is still very strange, and you try to figure it out because I can't, because the testimony is that Mishel said, "You need identification." Why isn't it on the first five? Why isn't Thomas Young on the first five? I can't figure it out; see if you can. But certainly with those being in his control they would (1421) have disappeared and they could have had others in, if that was the thing that they did and they knew something was crooked. Would he leave trails on some things within his control?

He gets a letter, weeks, months later an agent comes in. He has all the time in the world, if he knew that he was in with Mishel and he did something crooked—"Wait a minute, let's see our records. What records do we have? Let's look at everything to see whether it is all right." You couldn't get another redemption form? You consider that when you are considering the weight you want to give to this overall picture as to whether or

not Mr. Miller was a partner with Mishel.

The Court: Would this be a good time to interrupt, or do you want to go on for a few minutes? We are going to take a ten-minute recess any time you say.

Mr. Rosenblum: All right, I will take it.

The Court: We will take a brief recess.

Mr. Rosenblum: I am not charged for the time.

(Short recess.)

(Jury not present.)

The Court: All right, get the jury in. We will go to 5 after 1, and that will be the absolute limit, so you schedule yourself accordingly.

(1422) (Jury present.)

Mr. Rosenblum: One thing that has always struck me as rather strange in connection with the Chernoff matter. Everyone knows when you commit a crime you don't want to have too many witnesses. You have the Chernoff bonds. You look at the last redemption form, Mr. Mishel signs it, that was his testimony—is there any reason in the world if he had a deal with Mr. Miller as to why he couldn't sign the bonds, too? He could have signed the bonds. He could have signed the redemption forms. What was the need for it? What was the need for getting a particular signature?

I will tell you what I think the deed was. Because he didn't know whether or not there would be a requirement that someone has to sign his name. So that when he is introduced as Chernoff, is Rosenberg, if Mr. Miller had said, "All right, sign your name on a piece of paper," you would have gotten that signature which was on the redemption form and which was on the bond. Otherwise, is there any need for taking another person in, making another witness?

Also, let me pose this to you: What was the need? In banks, you know, they deal in thousands, hundreds of

thousands of dollars. You have $6600. (1423) You got the president of the bank, according to Mishel, putting them through. And, if you recall, the first two were put through by Miss Graef. And all she said was Mr. Kennedy said to cash them, and she cashed them.

What possible need was there for having eight transactions? Certainly Miss Graef was in charge of that work. Certainly Mr. Miller would know from his past dealings as to what she did if he gave approval. Why put through that $840 worth? Is the amount so large? Is it millions of dollars? People cash bonds, you know, from your experience, in tens and thousands of dollars.

Why make eight separate transactions of it? Why make eight separate records of it? Why make it necessary to take it up with so many different people? If Mr. Miller was a crook and was putting this through, do you think he would say what Mr. Mishel said he said to him, "I got to put it through piece-meal"? Why? Can you think of any reason for them being put through piece-meal? Who is going to fool? Who does he have to deceive? $6684 worth of bonds? He couldn't put it through one slip of paper? Why bring in another man like Rosenberg?

To me, those things are inconceivable because they don't make sense, and if they don't make sense you (1424) have to look around a little and you see if there is another reason for it because Mr. Mishel was putting it through, and I still don't know whether or not—you remember, Mr. Kennedy is now dead—he was handing some of these to Kennedy and told him, "These are some that the boss cashed the other day, get these cashed, too." I don't concede these things couldn't have happened. When it doesn't make sense there is something wrong. And in particular, when you know that he did sign the last one himself, according to his testimony.

I had forgotten to tell you about Mr. Siegel who, you

recall, testified. And I asked him whether or not he told any authority that he had brought money up to Mr. Miller. And at Page 750 in the record the question I put to him was, about delivering the money in envelopes: "Who did you tell it to for the first time?

"I told you, Mr. McAvinue."

Do you recall, Mr. McAvinue was on yesterday, and the question I put to him was, "Did Mr. Mishel ever tell you that he sent money to Mr. Miller through any person? A. No.

(1425) "Q. Specifically, through Sam Siegel? A. No.

"Q. Specifically through Mortie Schnabel? A. No.

"Q. Specifically through Irving Rosenberg? A. No."

And you can be sure that if there was anything in his record the Government would have the duty and the responsibility and have the right to see anything that was said that could conflict with that. And you would see those records. There wasn't a question asked of him. And this is after an investigation of six years. You just consider that when you want to consider what Mr. Siegel is trying to tell you, six times, two or three times theatre tickets. This is in the record.

You remember how Mishel was ready to throw anything at anybody. He said he knew a lawyer by the name of Irving Luria who introduced him at the bank. He said he was having black market dealings with him. That was in 47. We had no OPA since 45. A person can say anything, destroy anybody, whether a professional man, business man, or anyone else, say anything that he thinks is going to fit the purpose. He thought it would make it better if he said the money was in (1426) envelopes which were open. Siegel says they were closed. He said some were open and some were closed

I think I have covered so far every one of the transactions excepting the Chernoff, which I am going to go into, and the stiff accounts. If you remember, and you

may not, on cross-examination I asked Mr. Mishel, "Did you have any dealings with Mr. Littlefield in connection with the opening of some of these accounts that you call stiffs.

"A. Dealing with Littlefield? Not that I remember. I could have, but I don't recall ever having any."

That is the man who when he went to the hospital and he was sick and they discovered a kite, and they discharged him. You heard Mr. Miller tell you the persons who can be in on a kite and not involve the officers, managers, bookkeepers, so on, tellers.

Now, if we look at the stiff accounts, you have Mr. Mishel telling you a story. "We needed stiff accounts because we had to deposit—our deposits ran as high as 150 to $200,000 a month in an account. So I agreed to give Mr. Miller $150 a month for every one of the accounts I used."

Now, that it is a definite positive statement that Mr. Mishel makes. As I said to you before, once in a (1427) while you are fortunate enough that you can find something that can show you in black and white whether the man is lying.

You recall yesterday the Government put in the Young and the Case, and Mr. Hallinan said to Mr. Miller, "Isn't it a fact that the initials, there are no initials as to who opened the account"—although Miller's initials are there if he introduced that account, he gets credit on the—"that there are no initials because you were looking forward to the day when this would happen, and you would be able to say, 'Ah, my initials aren't there, but I opened it'?"

Can you really accept that, swallow that? If a person is looking forward to the day, does he make records of any kind? When you analyze it more carefully, as I did yesterday when I kept on shoving in one paper after another, four of those six stiff accounts, either by signature card or identification of the opening sheet, is Mr. Little-

field's. Mr. Miller identified two of them. You have two with Mr. Littlefield, R. H. L. right on it. Mr. Miller is working a deal, Mr. Miller is supposed to be getting $150 a month. Mr. Littlefield, the man they discovered was running a kite, is the one who opened some of these accounts.

(1428) You heard the testimony. Anyone can bring in a signature card; if it comes through a certain source you get credit for it. You remember, you find at Page 239, Mr. Mishel said in referring to the Sam Marco signature card, the one that has Mr. Littlefield's initials, he said, and I think it shows the practice, "That is one of the cards I sent down." You don't even have to bring it down yourself, you can sent it down, you open an account; you know who was coming there. You heard what the testimony was, that a certain girl opened it, took it off the opening sheet, put down there the one who gets credit, the name of the person who opened the account from the identification of the handwriting and so on.

What is so important about these stiff accounts? You have Williams, Marco, Newman, Young, Case, Feinman. I have told you about the identification of the opening sheets and the two cards which bear Mr. Littlefield's initials. If those four are Littlefield's, why couldn't the other two be Littlefield's? If it was done as was inferred, that the name of Miller was purposely left off, would all these stiff accounts be in exactly the same condition, stiff accounts. He gave a whole list of that. In fact, mentioned some which it appeared were not in (1429) that bank. Ah, "You, Mr. Miller, knew that the day may come when there might be a day of reckoning and that is why you didn't want your initials to be on there." But look at the other four. I say to you that you have the right to infer that the other four were opened by Littlefield if these two also were opened by Mr. Littlefield. If they were opened by someone that didn't know, there

would be nothing wrong there, so far as they didn't know it was a stiff account.

But Mishel tells you he knows it was a stiff account because "I gave him $150 for every account, because I had deposits of $150,000 to $200,000 a month in these accounts, so I paid $150 a month for each account."

All you have to do is to multiply it out, $150,000 a month, the testimony was, twenty-one months active accounts, that is, active accounts total twenty-one months, and the amount that would be deposited would be $3,150,000. He said 150 to $200,000. I multiplied it out for that figure as $200,000 and the amount deposited in those twenty-one accounts would be $4,200,000. But when you take a look at the accounts—you heard Mr. Miller testify, and it wasn't contradicted, you can be certain that the bank records if they contradicted it, they would be here to show that he didn't give a correct figure—(1430) instead of this $3,150,000 or $4,200,000, a total of all, it was $129,848, an average of about $6000 a month. But his telling you that you should believe that he was paid $150 a month because there was a need for it. If there was a need for it why wouldn't they have a writing in black and white so that he can fall back on it?

Doesn't it really look, with the Littlefield and the $5000 bond that I developed yesterday, the stiff accounts, doesn't it look like Mr. Mishel is just transferring what he did to Mr. Littlefield and saying he did it with Mr. Miller?

All right. Now, I think he even tried to palm off on us a Degas—I don't know my art—a Degas which was hanging in the Louvre—he left the impression that that was brought in by Mr. Mishel, that he brought in a picture and gave it to Miller to borrow money. I don't know how far we can just keep on accepting this. But remember his Honor is going to tell you, I am quite certain, that if you are satisfied that he lied as to a material fact you

may disregard all of Mishel's testimony if you wish to or accept that part which you care to accept.

Then we get down to the two loans. I won't take too much time on that. Two $5000 loans. You heard (1431) the testimony, on March 2 and March 9, 1950, the loans in connection with the liquor store. Then you heard that when Mr. Miller said he brought him down and said, "We got information"—I want you to be very careful, because there was one piece of paper introduced which gave certain dates, like January and February, so that it would seem that a memorandum had been prepared by Mr. Miller before or at the time so that we would be put on notice when he was questioned that it may have been in June, several months after. So you have to take that proof which is not disputed, and we gave you the information, the approximate time, and we gave you the source, Dun & Bradstreet.

So I think that it is clear that he came in, he wanted to borrow $5000, and we gave him $5000. There was also a lot brought out about the amount of his balance. You know what happens. When you need money you come in, you are entitled to a loan and they approve it. You don't say, "What is your balance?" If you think the man is entitled to the loan, and your loan is for $5000, you give him the $5000. You don't ask what his balance is. If you need more than $5000 it has to go to the executive committee.

He said he presented a statement so that he (1432) had something upon which to predicate it. It doesn't make any difference whether he had $3.29 or a million dollars. If you want to borrow money and you are entitled to get it, that is why you borrow the money.

But it was brought out that under the rules they are required, in order that they can make money on the money in the bank, that there be kept 20 per cent. And during

the month of March the average balance card, which is in evidence, shows that he had $2000, which would be 20 per cent of the $10,000 that he got on March 2 and March 9. Then it was brought out that at the end of the month or the early part of April he went back to about $2. That is when Mishel went bad and he just took the money. There is nothing to that which was significant. So just don't be impressed by the $2.94 and the $61 or whatever it may be. It was explained, it was explained fully.

However, when the day came and it was discovered and it was learned by the bank that he had borrowed money on the store which he didn't own, and he sent for him, he gave him a story, as Mr. Miller said, well, "It sounded plausible for a while," but, well, he said, "You had a right to tell me what was going on." The story about it takes a month to clear, the way it was developed, it (1433) had already cleared and "We have got that information." Then he said, "If you feel better about it I will give you some exchange securities." He brings down a hypothecation agreement, brings down stock exchange securities which he puts in there.

Now, you heard the testimony that when Mr. Mishel was arrested on October 6, 1950, he went up to see Mr. Miller and said, "What's this about me being arrested?" And that Miller said, "Don't worry about it. You keep your end up and I will keep mine up." October 6. But the undisputed testimony in fact is that in the latter part of May, 1950, four or five months before Mr. Mishel was arrested, at a time when he couldn't conceive at that time that he would be picked up, the testimony as it stands on this record is that the first person, the very first person from whom the authorities learned that Mr. Mishel was a swindler was through Mr. Miller when he sent down Mr. Reedy to the District Attorney's office, to Hogan's office, to advise him. That is the testimony. You try to reconcile it now. And even to the point that on October 6—be-

cause Mr. Miller said that there was no such meeting, it never occurred—that previously, being one of the parties who (1434) were crooked with Mr. Mishel, when he is informed about the loans made on the store that he didn't own, when they are informed that the Alpren securities were either stolen or forged—or whatever they were, I think it was stolen, and when you find the testimony is that immediately upon his receiving such information he sends Mr. Reedy, who knew Mr. McAvinue, McAvinue being in the fraud office at the time, he sends him down there and reports it.

Well, you think about that. Do crooks who are working a deal, a whole series of deals, would one of them, five or six months before the second crook knows that he is going to be picked up, would the first crook say, "Go down and file a complaint, bring it to the attention of the authorities"? And remember that it is on the Alpren securities on the two loans that Mr. Mishel is doing up to twenty years. The sentence is ten to twenty years.

And remember, the testimony is that Mr. Miller testified before the Grand Jury. When his personal attention was needed, he went down. He send Reedy down. He said he works in the bank, he knew Mr. McAvinue. He sent him down. You remember Mr. Hallinan said, "Isn't it a fact that you sent Reedy down because you (1435) didn't want to go down yourself because if you did the whole roof would collapse on you?" You remember that is the question that was put to him. If he didn't want the roof to collapse on him, would he even tell Reedy to go down? If he were a crook and he wanted to be certain that his crookedness and that of Mishel never came to the front, never came to light, would he send anybody down, knowing that he was a party to it? It is just inconceivable to me. And I think the fact that he testified before the Grand Jury against Mishel, testified before the Grand Jury against Rosenberg, that all those

things you have a right to consider. You have had a lot of testimony given about Irving Mickey Rosenberg. Now, you know that the burden of proving a criminal case beyond all reasonable doubt rests on the Government. You have heard the testimony that I saw Schnabel—I brought it out when he took the stand—that I tried to get Siegel to come down, and he wouldn't come down to see me. You heard testimony that Mr. Rosenberg was at my office. I was unsuccessful in getting Siegel down.

I think the proof now shows that Mr. Schnabel was called by the Government. The proof shows that Mr. Siegel was called by the Government. I tried to see (1436) everybody. As the record stands, Mr. Rosenberg is alive and well and available, and he was not called by the Government. Remember, you were told that Mr. Rosenberg was available to me as well as to the Government. That is the fact. But just remember, Rosenberg went to jail because of Mr. Miller; Mr. Miller identified him; Mr. Miller picked him out; Mr. Miller went before the Grand Jury, and he went to jail. Keep all those factors in mind.

Now, I have covered the stiff accounts, and I think we have now covered the hot bonds, the hot money, the $5000 item, the Missouri Pacific, and we are now left with the discussion of Chernoff.

Now, you know, the testimony of Mr. Miller is that a man was brought in represented as Mr. Chernoff, who he later identified by pictures as being Mr. Rosenberg. Remember, there has never been a dispute as to whether another man was in that bank, at least they dispute in a sense that Mr. Sershin said at the very beginning he disputes with Mr. Miller as to whether he said he was at the door or whether he was where he could see him, but Mr. Sershin and Mr. Sweeney—remember when I tried to show Sweeney the distance from the door up to the place where Mr. Miller's desk was?—said that there

(1437) was a man. They say that he said he didn't look at him. Miller says, "I gave him a description." Miller says, "I told him there was a person who was represented to me as Chernoff."

And again I say to you, if there was no need for another person to be there, why did Mishel need someone to sign those bonds?

There is another powerful point that has never been fully denied. When a letter was written by Mr. Miller, if you recall—let me give you the sequence. In August, 1950, notice came in that the Chernoff bonds which went through the bank were stolen and forged. Then the agent came in in August. Then on October 6 Mishel was arrested, in 1950, by Sershin. And you remember that the first time that a claim was made by the bank, Miller claiming and swearing to you from that stand that he told Sershin there was another man there who was represented to him as Chernoff, and at the time he said he gave a description, and he said the agent said that that was not a good description. He gave them the best that he could. But remember that when the first letter came from the Government, the letter of thirteen months later, saying, "We feel that the bank ought to pay for the bonds because they were negligent"—(1438) remember that is the basis; there was no criminal thing at the time. This is just trying to get money, one doesn't want to pay and the other one wants you to pay. And at the time he wrote that, "I was informed by your agent that the bank was in the clear."

Now, either a man has to be a lunatic and not know what he is doing or you find the record we find in this case. You remember it was brought out there were no notes taken by Sershin or Sweeney, they made nothing at the time of their discussion. But here is a letter that goes from the bank, from Miller, to the Government in which he says, "I was informed by your agent that the

bank is in the clear." You remember the testimony Miller gave. He said he asked the agent, and the agent said, "Now that we have the crook the bank is in the clear and we know just how this happened."

And you know as well as I do, you are dealing with agencies, secret service men, as soon as the Government, the fiscal agency, received that letter in which Mr. Miller said, "I was informed by your agent that the bank is in the clear," what would you do? What would I do or any other person occupying the post when a statement like that is made? The first thing you would do is to get in touch with the agent and say, "Did you make that statement?" (1439) And if you had an answer and he said, "I didn't," you would write back and say, "I have conferred with the agents who were in to see you and they deny that such a statement was made."

To this very moment there has never been a letter written denying it flatly. The closest you get is in some subsequent letters when the Government, in one of its letters to the bank, says, "We have no knowledge of your claim with reference to the statement by the agent." That is a quibble. Certainly the thing to do, if this is an important thing, and it certainly must be, is to say, "We talked with our agent and our agent says that isn't so. Don't you be saying something that you want to make a record of." Who would know that he can get away with it if he is trying to make a record? Would he know that someone else wouldn't deny it and put him right on the spot?

There is a reason for these things. You saw the care and the meticulousness with which Mr. Heffelfinger testified—everything is carefully done. The statement is made in the letter, "I was informed by your agent that the bank is not liable," or "We are in the clear."

(1440) "I was informed by your agent that the bank

is not liable" or "We are in the clear." Whatever words were used, it means the same thing.

The best you ever get is several letters later when they say, "We have no information in that regard" or words to that effect. Couldn't they get the information? Don't they deal with their own agents? Isn't it logical that they take a letter they received and turn it over to Sershen and say, "Here, brother, is what this man says."

Isn't that the thing you would expect a Government agency to do? You consider that when you want to consider whether or not Mr. Sershen was in error and maybe he forgot what he said. One thing is clear: You never got a flat denial.

Now, the first count of this indictment whereby, you know, there is supposed to be a false statement made in order to deceive the Government, even though the indictment says that Mr. Miller stated that they lived up to or followed the requirements of the circular letter, that isn't what he said.

In that letter he says—that is the letter of December 26, 1951, upon which the first count is predicated——

(1442) "At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

How could the Government be deceived in the light of that record? Everything that happened before December 26, 1951, all the facts, had been made known. This is not like somebody writing a letter, "I tell you something so you can do something for me," where the Government doesn't know what happened previously. This is a letter which was written close to 18 months after the agents were first there. How was he deceiving them? About what? The Government said it made this investigation,

it knew and understood what the facts were and they said, "We want you to pay," and Mr. Miller said, "No, we are not liable; we are not negligent. Your agent said we were not negligent. We should not be required to pay."

That is what this first count is about. So whether or not he was trying to deceive the Government, making this false statement, when he said, "We were informed,"—"I was"—let me read this (1442) again. It is very important.

"At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

Remember, too, that if Mr. Miller was a crook, as he would have to be if he was in cahoots with Mr. Mishel, all he had to do was to do what the Government said in its first letter. You remember the first letter in July of 1950—"Notify your bonding company."

The bonding company puts the money up and pays it over to the Government or gives it to the bank and they pay it, or they pay it first and get reimbursed. If a man is a crook and he doesn't want to be considered any more, to be investigated any more, to bring it to light any more, isn't that the normal thing and particularly when he has a bond and the Government says, "Notify your bonding company. We think you are negligent. We say you are negligent and you say you are not"?

What really happened? It is like a lawsuit, any case in which one party says, "I don't think I (1443) was negligent." The Government says, "We think you are." They say, "We have reviewed your claim and we still think, in view of all the facts, you are."

They are taking the facts Mr. Miller is disputing. Isn't it a logical thing if a man is a crook to say, "All right,

Mr. Bonding Company, I am the president. We were negligent. Pay it."?

That is the end of it. What is he contesting for? What is he contending for? Is it money out of his pocket? Was that the reason? Or was it because, "I want everything to be spread on the record because I am a crook and I want it all developed"?

He has an opportunity, if he is a crook, to clean it up by paying it. Isn't that the logical thing he would do? That is your first count.

Your second count is the one—the other is Government's Exhibit 22 and this is Government's Exhibit 23. Again this issue is going on. The Government says, "We want you to pay."

Miller says, "No, I don't think I should pay. The bank isn't liable."

He says: "Gentlemen: We have your letter (1444) of March 11th requesting reimbursement on account of alleged erroneous redemption of United States Savings Bonds bearing the names of various members of the Nat Chernoff family in the amount of $6684.50. Reply has been delayed because of the overlapping absences of our attorney and the writer.

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's Circular covering such redemptions dated December 19, 1947."

Then he goes on:

"When you originally called this matter to our attention we notified our bonding company, but subsequently informed them that the investigation made by your Department indicated that the bonds were properly cashed in accordance with the procedure laid down in your offi-

cial circular as advised in our letter to you dated December 26, 1951."

This is the second time. Then one letter came back: "We have no information with regard to your claim." Never a flat denial. Then it says, now having been told they want the money:

(1445) "We are again filing claim under our Banker's Blanket Bond and will make reimbursement as soon as this matter is processed by the bonding company."

That is April 4. There is a further contest. Do you remember the position that Miller took, which he could have wiped out? He gets hold of his lawyer. Do you remember the memorandum which says, "I tried to do everything"—you will have those memoranda. I am not going to take the time because my time is running out. I only have a few minutes left.

He writes to his lawyer, Levy, and he says:

"I have done everything I could. Here is the file. Make whatever investigatoin you have to make. Do everything you have to. You take it up. There is nothing else I can do. I have tried everything within my power to convince them that there should be no payment made. You most likely will take a different approach as a lawyer. Go ahead and do so."

Then you recall the letter that Mr. Levy wrote, and Mr. Levy was on the stand. You remember that Mr. Hallinan asked Mr. Miller what Mr. Levy did with regard to something he put in this letter. Remember, Mr. Levy was on the stand and he is the one (1446) who could have been asked or should have been asked what steps he took and what sources he used for his information. So the letter from Mr. Levy is to Mr. Bartelt:

"Dear sir: Our client, the Pennsylvania Exchange Bank of New York City, has turned over to us its file regarding the cashing of certain U. S. Savings Bonds bearing the names of various members of the Nat Chernoff family at

the total redemption value of $6684.50. We have read this file very carefully and we have also interviewed Mr. Miller, the president of the bank. We also note from the file that this matter has been reviewed by you. We are wondering whether or not all of the facts in the matter have been presented to you because, from the facts as we learned them, and applying Paragraph 4 of the Treasury Department circular of December 19, 1947 outlining the procedure for cashing E Bonds, we find it difficult to deduct the basis of your claim for reimbursement.

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller (1447) to redeem the bonds."

Mr. Miller told you Mr. Levy prepared this. Mr. Levy was on the stand, and if Mr. Hallinan wanted to know the source, he would have gotten any answer Mr. Levy would have given him. He was on the stand and was questioned about this letter which he sent. Just remember that.

"The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

You remember the testimony of Miller was that the identifier, Mr. Mishel, went out of his way to add to it. He asked him, "How do you know it?"

He answered, "He works in our restaurant over at Roth's."

Also, this is peculiar. You see these letters. Still the agents said that the name they gave them was Young that they were going to look for (1448) when the history and the record was made that the person who was brought in as the owner was represented as being Mr. Chernoff.

"We want to bring to your attention at this time that in view of the fact that Mr. Mishel had been a depositor of the bank for upwards of four years and that his transactions up to that time had been satisfactory to the bank and that Mr. Miller accepted, and had a right to accept, the identification of the person who claimed he was Mr. Chernoff, that such identification satisfied completely the requirements laid down by the Treasury Department for the cashing of these bonds. It seems to us that no better identification could be made than having somebody who is well known to the Bank Officer identify the person as the one named in the bonds. Such identification, in our opinion, is superior to identification based on automobile registration, license, credit cards and other methods of identification of the same type.

"We therefore respectfully ask you to have the matter reconsidered and if you deem it advisable to investigate further, we would welcome same and cooperate with you to the fullest extent. (1449) Incidentally, Mr. Miller testified before the Grand Jury regarding the theft of these bonds and identified the person who cashed the bonds as the one who claimed he was Mr. Chernoff and who was introduced to Mr. Miller as Mr. Chernoff by Mr. Mishel.

"Anticipating your cooperation and hoping to hear from you as to what further action you deem necessary, we are."

After that there was other correspondence and the Government said, "No, we think you should pay."

So the bonding company paid to the bank, the bank paid to the Government.

This is the third count. What the Government says by its indictment—remember, in the second one, in the second count, they say the representation was made that they lived up to the circular letter. Remember the letter I read to you. You undoubtedly will have it. If you want any exhibits, I am quite positive you will have them.

The letter read: "We believe that we lived up to the spirit and the letter as set forth in paragraph 4 of the circular letter."

(1450) It expresses a belief. They say, "No, that is false."

Keep in mind now—you figure out how that could be false in view of all the history that the Government had in connection with this case. Its investigation had been made. They knew what we contended and what the Government agents contended. So they say the Government was being deceived when he said we believed we lived up to the spirit.

For a moment, treat with that. The cashing of bonds is something that the Government is very anxious to have done. They say: Make available to non-depositors as well as depositors facilities to cash.

If people bought bonds and if you are in another city or you didn't have an account in a bank, what are you supposed to be able to do; not cash them? If you had too much trouble, people wouldn't buy bonds. So you will see a whole series of things as to what you should do. It is very strange, when you look at it carefully it doesn't say what you must do. It says what you should do. Why is that? In the final analysis, there are so many different circumstances which may come into being, that they leave it (1451) to you and you are supposed to use your good judgment as to whether you are to cash or not. For instance, they say in some cases a man can come in by his automobile registration, license, credit cards and other things. The best kind is where you have the identification

of a person by a depositor, and you say to that person, "How do you know him?" And in this case Miller says that is what happened, and there is an issue here.

You remember two or three of the tellers said if an unknown person comes in accompanied by a depositor, it could be a member of the board, they can't cash it. You heard the testimony of Brennan, you heard the testimony of Miller, you heard the testimony of Wilmot, who was the head teller. It is their duty to cash it if they are satisfied that a customer of the bank identifies a person and tells how he knows him. You can't split these things. The real test, in the final analysis, is do you believe you ought to cash it.

Remember he asked a question: "What would you do if a wife came in, Mr. Miller; would you cash it for a wife if you knew the husband?"

He said, "I probably would."

(1452) These things are not cut that sharp because if you did you never would have anybody cashing bonds. The test here is whether or not, really, Mr. Miller was a crook connected with Mr. Mishel, or whether he wasn't, and then it throws light on all these things.

Remember, too, hindsight is so much better than foresight. Now that you see Mishel and learn the things he did, you wonder how could a man deal with a person like that. That is hindsight. Remember he had credit up to $35,000 and the unanimous approval of the executive committee that passed upon the loans.

Also, isn't it very strange, why didn't Mr. Mishel, if he is saying he has deals on all these things, say he had a loan—that on this loan arrangement for $10,000 he gave Mr. Miller something? If he is in on a crooked deal, these bonds are stolen, why didn't he say, "I gave Mr. Miller so many dollars because he accepted these stolen Alpren bonds"? Or is he saying in connection with that he didn't tell Mr. Miller?

You see how it falls out of focus? He (1453) claims he had a deal with Miller and Mr. Gallagher. Isn't it logical he would say, "If I brought the Alpren bonds he would get a cut out of it"?

Not a word about that. You know he would say that in a minute when I questioned him about it. Never once. Why? Why shouldn't that have been part of the deal? At that time back in March of 1950 there was no arrest of Mr. Mishel, there was no trouble brewing, nothing had happened. They had just loaned him money. If they had loaned him money, he should have paid off Mr. Miller, and if he accepted the bonds or if he knew they were stolen, he should have paid him off. Why didn't he say that? Because that didn't happen on any of the other occasions when he said he had a deal and he said he paid off.

I only have about five minutes. I will try to finish up very quickly. It is hard in a case like this to take every phase of it. I have to rely upon your recollection. I hope it is good and sharp because after I finish I can't answer Mr. Hallinan. Remember that. Even if I could think of a reason in answer to something he says, remember I can't because under our system he is entitled to have the last say. (1454) So I sort of look to you to represent me and see if there isn't an answer from all the overall picture to some of the arguments which are made. He can reply to my arguments, but I can't reply to his.

Now, what do we have? You saw Mr. Miller. I put him on the stand. He was available for cross-examination for several days. As to whether he knew Mr. Schnabel or didn't know Mr. Schnabel, I answered that for you.

You heard the answers he gave. You saw how he conducted himself. You saw how he treated the questions which were put. He didn't evade. He made the statements and told you what his answers were to any questions which were put. You saw him, you could evaluate

him. You didn't see him being drawn through a rack and saying, "You lied here; you lied here; you lied here." Just balance that off. Think of it. You have on the one hand a man who is a crook, a confirmed crook, as has been referred to, doing 10 to 20 years and five more. He said he didn't have a deal in connection with his testimony here. He said he did have a deal in connection with his prior convictions when he was sentenced and claimed he had it in writing.

(1455) Now, it is for you to consider what he wants and what he hopes to get He said he has hopes. He wants to be compensated. But remember, he wants to be compensated by tearing down a good, decent citizen, a person who has never been convicted in his life, never been arrested in his life, a married man, has a wife, has a daughter, a man who has worked his way up.

He isn't ashamed of it. He worked his way up and worked nights, as he told you. He did get somewhere. He reached a point which is practically admired by anyone who wants to be in the banking business. He was the president, and he hoped to have his future there for himself, and he has resigned as a result of Mishel and what happened here and now Mr. Mishel wants him to go to jail so he can get out of jail.

I say to you that I don't think that the proof in this case establishes or should satisfy you that they have established his guilt beyond a reasonable doubt as required by law, and I think you can be fair and decent about it and bring in that fair verdict which I hope and pray is the one that I think it should be, and that is that this man is not guilty.

(1456) The Court: We will recess now and resume at 2.15. Don't discuss the case at this phase among yourselves and don't let anybody discuss it with you.

(Recess to 2.15 p. m.)

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(1518)

New York, November 2, 1956;
10.00 o'clock a. m.

Trial resumed.

The Court: Mr. Hallinan, have you got the letters that go with the counts?

Mr. Hallinan: Yes, I have.

The Court: And the Treasury circular letter. I don't know whether I will need it but I thought I would like to have it.

Mr. Hallinan: They go in order, 22, 23 and 24 (handing).

The Court: All right. Call the jury in.

(Jury in box.)

Charge of the Court

The Court: Mr. Foreman, Ladies and Gentlemen of the Jury: Before I start to instruct you on the law I would like to take my opportunity to tell you how much I appreciate the conscientiousness of your service. Both counsel have mentioned it, and they are indeed (1519) sincere. In a case that goes on a little bit beyond the length of the usual case, and particularly a case that has a lot of documents, the tempo of the case slows down, and it is a real test for the jury to see whether or not they continue to pay the same careful attention as they would in a case that was full of blood and thunder. I have watched you, I have watched you read the exhibits, and it has been a pleasure to see. It is the sort of public service most people do not know about, and it is a true public service because it is virtually anonymous. The only thanks you ever get is at the close of the trial and that is mere words. But it is a very deep-felt thanks, because the time you have

taken and the real interest you put into this affair is strictly a matter of public duty.

Now I might say that it is fortunate, too, that the jobs of both of us have been made easier, because we have had able counsel on both sides who spared no effort in the preparation, in their diligence in the presentation of this case to you.

I think the first thing we should know is our respective responsibilities. As to matters of fact, what was said by the witnesses, what the (1520) documents say, who you believe, who you do not believe, and what it all adds up to when you are through, those are matters in which your judgment is supreme and free from any suggestion by counsel or by me. That is entirely your province. You are the sole and exclusive judges of the facts. That is the way it has been put many times. And if counsel or I in the course of any colloquy have suggested a view as to the facts or as to any issue in the case that is the slightest bit different from the view you hold yourself, disregard what we said because, particularly in our colloquy back and forth, we were talking as lawyers, we were talking in our own jargon, we were talking about matters of law and procedure, the mechanics of this case, how it should proceed, and that is what we were thinking about and what we were concentrating on. We were not thinking in terms of facts. We leave that to you.

If during the course of these instructions I touch upon the facts of the case or what a witness said or what I think he said, again I am trying to illustrate some point of law to you. I am not trying to tell you what the facts are or what you (1521) should think the facts are; and if what I say is at variance with what you recall, disregard it because my concentration is on the legal concept, not upon the accuracy of the facts. So long as we understand each other, we will get along all right.

When it comes to questions of law, it is the other way around. There I have the full responsibility. And if I tell

you something is the law and you think I am wrong, why, you disregard what you think yourself and do what I say, because that is my responsibility, not yours; or if you think that the law ought to be changed or it should not be that way, disregard those views because that is not why we are here. The process of law-enforcement is much more scientific than most people think and so is the process of a trial. And if we each do our job and keep within our own little compartment, things will work out the way they are expected to.

Now, in telling you about the law I am going to first give you some general rules of law which apply in all criminal cases. Then I will tell you about the crime which is charged here, the statutory provisions, and what you need to find in (1522) order to bring in a verdict of guilty under the statute. Then I will discuss some rules of evidence with you which may help you in giving weight to the testimony of the witnesses and fitting it into place. So we will start off with these general rules. They are the basic rules under which our procedure works.

At the very outset, the defendant is presumed to be innocent. When a man is charged with crime he is presumed to be innocent and that presumption stays with him, and when you begin to think about this case and when you begin to discuss it you start off with that presumption in mind, because that is the way it works in this country.

The Government has the burden of proving him guilty. That means the Government must produce the proof, the evidence, and the evidence from the witness stand or by the documents which convinces you that he is not innocent, that he is in fact guilty. That is the burden which is on the Government. The Government must carry that burden beyond a reasonable doubt. That means that if after hearing all the testimony you just do not know which way is stronger, whether the evidence on one side is stronger than that on the (1523) other, why, then you have

not been convinced beyond a reasonable doubt. Or if you merely think that the evidence in favor of the Government preponderates, that if you had to pick between one or the other and you would pick the Government, that is not proof beyond a reasonable doubt. Proof beyond a reasonable doubt means proof to a moral conviction on your part. It is beyond any doubt founded upon reason. Now, that does not mean that it has to be beyond any fanciful doubt or any whimsical or capricious doubt, because matters relating to human affairs which we do not see ourselves can never be proven beyon all doubt. But it means beyond any doubt for which you can give a good or substantial reason.

Now, when all of the evidence in the case has been carefully analyzed and studied and weighed by you and it produces in your mind a settled conviction the the defendant is guilty, the kind of conviction you would be willing to act upon in matters of highest importance to yourself, when you are convinced to a moral certainty, why, then you would be convinced beyond a reasonable doubt of the truth of the charge. You would be free from reasonable doubt. Or we can say that absolute or mathematical (1524) certainty is not required because you cannot get that kind of certainty in human affairs but you must have such a conviction that you feel conscientiously bound to act upon it.

With these general rules in mind we come down to the crime or charge. There are three counts in the indictment. There are three separate crimes charged, and they deal with filing statements in a matter within the jurisdiction of the Federal Department which were false, according to the charge, and which were knowingly false and which were material.

Now, here is the statute: "Whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully makes any false, fictitious or fraudulent statement, is guilty of a crime."

We will break that down a little bit. That means, in order to return a verdict of guilty under such statute, you

must be convinced beyond a reasonable doubt of each of the following elements: That the defendant made a statement, that the statement was false, that the defendant knew it was false and that (1525) he made it wilfully, that is, that he made is purposefully, deliberately, with an intent to deceive somebody, not just carelessly or negligently, and that it was made in connection with a matter within the jurisdiction of a department of the United States and, finally, that it was material. In other words, that it had some significance. If it was a mere insignificant statement that would not be enough. But that it was a material statement, the kind of statement that was likely to affect the determination of the Federal officer concerned. Those are the elements.

Let us look at the indictment, in the light of those various elements. As I told you before, and I will tell you again, an indictment is no proof of a crime. This is simply a charge. This paper asks questions that we are here to decide. It does not prove anything in itself. I am going to start backwards in analyzing the indictment. I am going to start with count 3, then I am going to go to count 2, then I am going to go to count 1. The reason that I do that is that I think it is the easiest way in which to discuss them.

(1526) Count 3 is free from certain little problems of construction concerned with count 2 and count 1, so if we think about count 3 in our discussion at the beginning I think we can make these elements very clear to each other.

Count 3 charges that "On or about June 4, 1952 at the Southern District of New York"—now, Manhattan is in the Southern District of New York; the Southern District has several other counties, but Manhattan is the only one we have to be concerned with here—"James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did

unlawfully, wilfully and knowingly make and cause to be made a false and fraudulent statement as to a material fact, to the effect that one Irving Mishel introduced a person to the defendant James W. Miller as Mr. Chernoff, whereas in truth and in fact as the defendant then and there well knew he did not introduce any person to the defendant as Mr. Chernoff." In other words, the count says that in that letter the defendant said that Mishel introduced Chernoff to him and in fact he knew that was false, that Mishel (1527) never introduced Chernoff to him.

The letter in question is Exhibit 24, and it has been read to you several times. Paragraph 2 is what I will read.

"We have been advised that a person came into the bank with a depositor of the bank, one Irving Mishel. This person signed the bonds in the presence of a teller of the bank and asked the teller to redeem the bonds. The teller asked for identification and Mr. Mishel, who was with that person, told the teller that Mr. Miller knew Mishel and that he was identifying the person as the payee named in the bonds. Mr. Mishel and the person with the bonds went over to Mr. Miller and the latter asked Mr. Mishel who the person was; Mr. Mishel introduced that person to Mr. Miller as Mr. Chernoff, the man in whose name the bonds were registered."

Now the fact that Mr. Miller did not sign the letter or actually mail it is of no significance if you are convinced beyond a reasonable doubt that it was done at his direction, because the statute provides that not only whoever commits the offense but any person who aids, abets, counsels, commands, (1528) induces or procures its commission is a principal, or whoever causes an act to be done which if directly performed by him would be an offense against the United States, is also a principal. In other words, if a person intending to commit a crime gets an innocent person to perform one of the steps necessary to complete that crime, it is the person who intended to com-

mit the crime and who directed the performance of that step who is the principal who committed the crime.

So if you are convinced beyond a reasonable doubt that Mr. Miller caused this letter to be sent, knowing its contents, then I tell you it is of no significance whether he signed it and mailed it himself or had someone like Mr. Dorff do it for him.

We now come back to the main track as to the elements involved. The testimony is that this was formulated and mailed in this county, as I recall it, and if you are convinced of that beyond a reasonable doubt that brings it as an act committed within the Southern District of New York.

Now as to whether it is a matter within the jurisdiction of a department of the United States, (1529) I will tell you as a matter or law that the Fiscal Service of the Treasury Department of the United States is a department of the United States, and I will tell you that as a matter of law an application for relief from liability for an improperly cashed Treasury bond is a matter within the jurisdiction of that department. So if you are convinced beyond a reasonable doubt that this letter was formulated and sent in the course of such a matter, why, then that would satisfy that element of the crime.

We come to the next question: Are you convinced beyond a reasonable doubt that the defendant made the statement? That gets to the question of whether you are convinced beyond a reasonable doubt that he knew what was in the letter and directed Mr. Dorff to send it.

The next question is, are you convinced beyond a reasonable doubt that the statement in the letter was false, the statement that Mishel introduced a person to the defendant as Chernoff?

Now, that gets us into one of the heart questions, whether in fact Mishel introduced a person to the defendant at the time these bonds were cashed as Chernoff or whether he did not. The defendant (1530) claims that he did, and

he has testified that he did. The prosecution claims that he did not, and in that course they have submitted Mishel as a witness and they have produced the tellers who claim to have seen who was at Mr. Miller's desk at that time. You have heard their testimony in that regard. The Government's contention is that no one was introduced as the payee of these bonds, that Mishel came in to collect them and that Rosenberg was brought in only as a person to resign the bonds and that the defendant knew Rosenberg as an associate or employee of Mishel; whereas the defendant says that he understood the payee was employed by this Roth's Grill.

I am not going to try to go through all the testimony which you have heard summed up by two able lawyers, and I do not mean to say one thing is more important than another, but that sketches the issue as I see it.

The next question: If this letter was false did the defendant know it was false? Are you convinced beyond a reasonable doubt that at the time he had this letter mailed he knew it was false? (1531) Well, the defendant says it was not false, therefore, of course, he could not have known it was false. The Government says it was false and he knew it was false because, in fact, it was part of a plan and scheme that he had for concealing everything he did with respect to the Chernoff bonds. And in that regard they had Sershen testify as to statements which he says the defendant first made as to lack of recollection and then as to the person standing in front of the bank which they say conflicts with his testimony as he gave it here; the ineffective investigation that Wilmot made when the mattter was brought to the bank's attention and the avoidance of initials on these redemption slips, contrary to what the Government claims was the practice at the bank of requiring initials on them. And, indeed, the Government claims that the one redemption slip which the

defendant knew his initials were on and the only one he knew his initials were on was surreptitiously replaced by the one which had no such initials on it. They say all of that shows a plan and scheme to conceal the defendant's participation in this Chernoff bond transaction and, therefore, this letter was no mere accident or no mere act of negligence, it was a (1532) deliberate and intentional false statement.

Now we come to the next question: whether it was submitted wilfully and unlawfully. In other words, when the defendant sent this, are you convinced beyond a reasonable doubt that he intended to deceive the Government and that he was purposeful and deliberate about that. The Government says, from the very nature of the statement, they contend, that is obvious, that it goes to the question of whether these bonds were legally cashed, cashed in conformance with the Government regulations or in the circular letter or not. The defendant says, "Well, I tell you that the statement is not false, therefore the purpose for which I sent it is immaterial."

The next and last question with respect to this letter is whether the statement is material or whether it is an insignificant statement. The Government contends, as I say, it went to the heart of the regularity of the transaction, that whether this man was introduced as the defendant says he was makes a substantial difference as to the degree of compliance with the Treasury Department circular letter or the non-compliance with it. The defendant (1533) again reiterates that the statement is true and, therefore, whether it is material or not is not really a question before us.

I think that covers the third count and the letter of June.

Now I will work back to the second count of the indictment. It reads: "The grand jury further charges that on or about April 4, 1952 at the Southern District of New

York James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely the Fiscal Service of the United States Treasury Department, did unlawfully, willfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with the procedures laid down by circular letter of the United States Treasury Department, whereas in truth and in fact as the defendant then and there well knew the said bonds were not properly cashed in accordance with the procedures laid down by the said circular letter."

(1534) First let me read the letter of the defendant which is said to be the basis for this charge. I will read, again, just the second paragraph of that letter:

"We regret that you are insisting on reimbursement because we feel that these bonds were cashed in good faith and within the meaning, letter and spirit of Paragraph 4 of the Treasury Department's circular covering such redemptions dated December 19, 1947."

I think that is all we need read from that.

Now pararaph 4 of the circular letter of the Treasury Department, Exhibit 21, reads:

"Personal identification, that is, identification of a stranger by a customer of or by someone well and favorably known to the paying agent, if carefully used, is one of the best methods of identification and has the approval of the Treasury. But, of course, personal identification is not considered good identification by the Treasury Department when a paying agent accepts the bare statement of the identifier that he knows the person presenting the bond for payment by the name inscribed on the bond. The personal integrity and reliability of the identifier (1535) are not sufficient. The reliability of the source and duration of the identifier's acquaintance with

the person presenting the bond for payment are just as important. The paying agent, therefore, should ask for the source and duration of the identifier's acquaintance with the person presenting the bond and should be satisfied that they are sound. At the time of payment a paying agent should require the identifier to sign his name and show his address on the bonds, or on a separate record, or should so record such data itself. A paying agent may imprint on the back of a bond for the signature of the identifier any form of guarantee which the agent may wish to use for its own protection. In the event of a loss the identifier will be expected to be in a position to present a reasonable basis for making the identification. In the absence of such reasonable basis the paying agent will be considered to have been at fault in making the payment. Consequently, the agent will have to sustain the loss unless he can obtain reimbursement from the identifier." That is the paragraph referred to in the letter of April 4th.

(1536) Now we have the same questions as to this letter that we had as to the other. First, was the letter formulated and mailed in the Southern District of New York? Second, is it a matter within the jurisdiction of a Federal department? And what I said on that as to the June letter equally applies here. Then we have the further question, is this a statement of fact? Now it says "we feel that these bonds were cashed in good faith within the meaning, letter and spirit of Paragraph 4." The defendant contends that that is not a statement of fact, that is a mere expression of opinion. The Government says that is a statment of fact; what he is saying and what he intended to say is, "These bonds were cashed in accordance with that paragraph of the circular letter." That is a question which you must decide. What is the true, natural purport of this language?

What did the defendant intend to be the meaning of this language when he wrote it? If you are convinced beyond a reasonable doubt that he intended it to be taken as a statement of fact that this circular was complied with and that that is the normal purport of these words, why, then you (1537) may treat it as a statement of fact.

This question of what is a statement of opinion and what is a statement of fact is the sort of thing that I guess metaphysicians could talk about for hours. But I will just give you a few simple illustrations that may help you. If I say I had breakfast at 8 o'clock this morning, that is a statement of fact. If I say, "I believe Joe Smith is going to win the election," that is a statement of opinion. You would be justified in relying on my statement, if it was important, that I had breakfast at 8 o'clock because I said that is what happened. But no one would be justified, at least in the eyes of the law that would not be held actionable in a civil case, certainly not a criminal case, if I express an opinion as to who is going to win the election, even though I falsely stated my opinion when in my heart I thought Joe Jones was going to win but said, "I think Joe Smith is going to win," because it telegraphs itself to you as a statement of opinion, not a statement of fact, and you are put on notice that I am not saying what the facts are.

(1538) We could take another case. Supposing I said to you that I believe that the English and the French are right in the way they are handling the Suez situation. That might be false. I might think they are dead wrong, I might know that there are scalawags underneath handling the whole thing. But, again, that would not be the sort of statement that would be actionable, probably not civilly and certainly not criminally, because it telegraphs itself to you as something which I really can't speak of as a matter of fact; I am obviously giving you my views and opinion with respect to it. But if I say to you, "I

believe I had breakfast at 8 o'clock," I am really saying it is my best recollection that I had breakfast at 8 o'clock. And therefore I would say that is a statement of fact, even though I start off with the magic words "I believe."

And so the question before you is whether this is really a statement of fact, started off with the words "I believe" in a loose and ambiguous sense, or whether it was merely intended as a statement of opinion. Unless you are convinced beyond a reasonable doubt that it was a statement of fact, why, you must vote not guilty on that count. If you are convinced (1539) beyond a reasonable doubt that it was meant as a statement of fact and that was the natural purport of those words, why, then you may go ahead and consider whether those other elements of the charge have been met. Then we come to the same elements that we had with respect to count 3. Was the statement false? And that, as I read the circular letter and I read the letter of the defendant, again turns on whether Mishel introduced anybody as Chernoff, and the further question as to whether Mishel was an identifier of integrity. The Government claims that the defendant knew Mishel, knew all about him, the kind of person he was and the illegitimate enterprises he was in and that, therefore, he was not a person of integrity who could identify anybody anyhow. The defendant contends that he did not know any of these acts of Mishel until after it was all developed later.

So you have on the question of whether the statement is false the same questions that we discussed with respect to count 3 and the additional question of whether the defendant was on notice as to whether Mishel was a person of no integrity. Then you have the same question of whether the defendant (1540) knew it was false and the same question of whether when he mailed it he did it deliberately and wilfully with an intent to deceive the Government and get free of this liability or to get this

liability compromised in some way. And, finally, whether the statement is one of materiality, whether it is the kind of statement that it has enough significance that it might sway the decision of the Federal officer responsible for making this decision. That is count 2.

We come back at last to count 1. And that charges:

> "That on or about December 26, 1951 at the Southern District of New York James W. Miller, the defendant herein, in a matter within the jurisdiction of a department of the United States, namely, the Fiscal Service of the United States Treasury Department, did unlawfully, wilfully and knowingly make a false and fraudulent statement as to a material fact to the effect that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by circular letter of the United (1541) States Treasury Department, whereas in truth and in fact as the defendant then and there well knew the said bonds were not properly cashed in accordance with the procedures laid down by the said circular letter."

On all of the elements, except the one I am about to discuss, you have the same questions with respect to count 1 that you have with respect to count 2, I mean as far as falsity, knowledge of falsity, wilfulness and materiality are concerned. I will now read the letter which is said to support count 1, and again I will only read the second paragraph of it:

> "At the time the investigation was made by your Department we were informed that the bonds were properly cashed in accordance with procedure laid down in your official circular and consequently no claim would be made against us."

And then it goes on to say that certain items in a previous letter of the Treasury Department were wrong. The additional question here which we must discuss exclusively with respect to this count is the language, (1542) "We were informed that the bonds were properly cashed * * *." The indictment charges, not that he said he was so informed, the indictment charges that the defendant stated that a quantity of bonds in the names of members of the Nat Chernoff family were properly cashed in accordance with procedures laid down by the circular letter of the United States Treasury Department. It is the theory of the Government that when he said "We were informed that the bonds were properly cashed" he was saying by implication and by intended implication "These bonds were properly cashed in accordance with our information," or "Our information and honest belief is that these bonds were properly cashed."

Your first question is, is that the true purport of these words? And is that the purport, the meaning of these words which the defendant intended? And if you are convinced beyond a reasonable doubt that it is, and only if you are so convinced when we get to the following steps, if you are convinced beyond a reasonable doubt that it is, you then come to the question of whether, one, he knew the facts were false, he knew the bonds were not cashed in accordance with Treasury Department pro- (1543) cedures; and, second, whether his information or the information he claimed to rely on was either absent or not a reliable basis for his statement.

In other words, if I tell you, "On information and belief Mr. Hallinan had breakfast at 8 o'clock in the morning," there are two questions. One, did I know very well that Mr. Hallinan did not have breakfast at 8 o'clock this morning? And, two, did I have a reasonable basis for relying upon the information to the effect that he did have, or did I have any information to the effect that he

did have breakfast at 8 o'clock this morning?

The defendant says, "All I put in that letter was to tell them what Sershen told me, that the bonds were cashed in accordance with the proper procedures and the bank was in the clear."

The Government says, in the first place, Sershen never told him that, so he had no reasonable basis for making any such statement in the letter, and, in the second place, he himself knew that that was not true, and what he intended to do by this letter, by using this form of words, was to get over to the Treasury Department that these bonds were cashed in accordance with the proper Treasury (1544) Department procedures when in fact he knew they were not.

So here you have the question of whether that is what the natural meaning of this language is, whether that is the way the defendant intended it to be taken, and whether it was false, whether he knew it was false, whether he had no basis for saying he had information to the contrary, whether he sent the letter in wilfully and deliberately as part of a scheme to deceive the Government, and whether it was material, whether it was the sort of statement that would affect a decision of the Federal officer involved.

Those are the issues in the case, as I see it, the principal issues in the case. I want to tell you again: I have tried to concentrate on the elements of the crime charged. I have referred to facts and testimony very briefly. I have been thinking entirely about the legal concept, trying to explain it to you. And if I have said something with respect to the testimony which is not in accord with your recollection, disregard it, it was accidental and unintended and I may have been innocently wrong. And, further, if I have given any emphasis to one fact as against another, I have not (1545) done it in an attempt to try to tell you what is important and what is not. I have picked out

the facts that came to my mind that would best demonstrate these legal concepts that I have been trying to explain.

The next question I think I have to discuss. In this case, as very often happens in the trial of a criminal case, there were references to acts which may be illegal other than the acts charged in the indictment. Again, the ones that I remember primarily are those in the cross-examination of Mishel. He was asked about various other transactions with Mr. Miller. He told about a $5000 bond which he said he cashed, after telephoning to Mr. Miller, through a messenger whom he sent to Mr. Littlefield. And in connection with the Mishel Liquor Company loan he said that he gave the defendant as collateral, when that loan went bad, certain Missouri Pacific bonds or stock which were stolen and which he said the defendant knew were stolen. And there was reference to burned money and things like that.

I mention this not to impress its importance but to subordinate it to the principal issues of this case. Mr. Miller is not on trial for any of those (1546) acts. And regardless of what you conclude as to any of those acts the only question which will be submitted to you is whether you are convinced beyond a reasonable doubt he committed the acts charged in the indictment. The reason you get off into these other acts, and I am not saying whether they are illegal or not illegal, and I am not even going to pass on it, is because in going into the credibility of a witness you are entitled to go almost into his whole life, and anything he has ever done that is wrong you can ask him about it so that you can show them to the jury against the background of the man that he is. The reason that I think Mr. Rosenblum went into these questions was to show the kind of transactions that Mishel had been in and to show what he sought, which he con-

tends, is a tendency or a deliberate plan of Mishel to draw the defendant into every mess that he was in himself. The Government also can go into these acts or argue from these acts which were developed, regardless of which side developed them; they can both take advantage of them after they are in or it can go into other acts of a similar nature to show that what the defendant did was not an accident or a slip (1547) or a mere negligent act, but to show that it was the deliberate part of a plan, a plan either to conceal the Chernoff bond transaction or even part of a larger plan with Mishel, if you believe what Mishel testified to with respect to these other transactions.

Now actually the probative value of these events is down the ladder compared with the testimony—this is only my view; you may use your own judgment in this regard—compared with the testimony that goes to the issues framed by the indictment itself. That is what we are here for. We are not here to decide what happened with respect to these other transactions except as they may shed some light upon the transaction charged in the indictment. As a matter of fact, many of the discussions at the bench were as to how far we would go and how far we would not go with respect to these other matters, and if we brought them out fully, and both counsel had their own views as to what kind of proof they would put in and what kind of proof should not be put in, we would be here until Christmas trying out these other things which are not charged in the indictment. So I simply say this is to try to put that testimony down into the level (1548) in which it is properly before you.

I can give you a very easy illustration unrelated to this case. If I were on trial for smuggling liquor into this country: I get down here to the Battery and I have a case of whiskey and I am trying to run with it and a

policeman comes along to arrest me and I hit him over the head with a blackjack and knock him down and I keep on runing. I am only charged with smuggling the liquor into the country; I am not charged the assault upon that policeman. It is perfectly proper for the Government to prove against me that I assaulted that police officer because that shows that I knew I was doing something wrong when I was fleeing and that I was trying to get away from the police officer, but if the jury concluded that I hit the police officer but I never brought whiskey into the country, they would have to return a verdict of not guilty because I was not on trial for the assault, I was on trial for bringing the whiskey into the country.

In other words, if for any reason, and I am not suggesting one way or the other, you believe that the defendant did commit some act other than that charged in the indictment and you for some reason (1549) thought it was illegal, you thought that he was not guilty of any of the acts charged in the indictment but that he was guilty of that act, this other act not charged, your verdict would be not guilty. In other words, you do not convict a person of one crime because you happen to think he committed some other crime.

There are a few other general rules of evidence that I ought to cover with you. Of course you know, and I have already told you but I will tell you again, you must reach your verdict solely upon the evidence, the legal evidence of the case, the evidence that you hear from the mouths of witnesses or that you read in the exhibits, not upon facts that are incorporated in the questions of either counsel, or not upon any facts that I may state or that they may state in argument or colloquy back and forth. It is your recollection of the witness's testimony and the exhibits that controls. And neither are you, of course, to think that any ruling on any objection or anything

that I have done in the course of the case dealing with procedure or law indicates any view whatever as to the guilt or innocence of the defendant. It does not. The rulings that I have (1550) made in connection with sustaining objections, overruling objections, what we will go into and what we won't, are matters dealing properly with the mechanics of the trial, how to get evidence in to you in the simplest fashion and not based at all upon what I think is the truth with respect to the charge.

There is one more thing I have to charge and that is circumstantial evidence. Where you have a question of what a person knows or intends, usually you have to come back to circumstantial evidence because you can't look into a person's head, since you do not know what he actually has in there. You can get some help of what he says he intends by what he says he knows. But sometimes you do not want to rely exclusively on that. You look at all the circumstances, how he acts and the circumstances around how he acts to decide what you think he really knows or does not know. You have that every day in your own common affairs. You have to decide whether somebody really knows something or whether they do not. You do not always take their word one way or the other. What they say helps sometimes. Also, you look as to what they have done. Did they act and do things as though they knew something or did (1551) not know something? That is called circumstantial evidence.

I can perhaps give you an easier illustration that does not have anything to do with this case. Supposing all these windows were shut and our question was, "Is it hot or cold today?" "What is the temperature outside?" There are three ways in which we could find out. You and I could all go down on the front steps of the court house together and stand there for five minutes, and then we would know of our own knowledge whether it

was hot or cold outside. Or we could send Mr. Rosenblum down and ask him to stand on the steps of the court house for five minutes and then we could bring him up, put him on the stand, swear him, and then we could ask him whether it was hot or cold outside? He would know of his own knowledge and he would tell us under oath what he knew of his own knowledge. That is called direct testimony—being able to tell you what they themselves know or think they know.

We come to the third problem. Supposing we did not have time for Mr. Rosenblum to go downstairs and we said, "Mr. Rosenblum, will you stand over at that window for five minutes and look outside and (1552) see what is going on?" Then we put him back here on the witness stand and swear him and we say, "What were the people wearing?"

He says, "They all had overcoats and hats on."

"How were they wearing them?"

"They had their overcoat collars all turned up."

"Was there water in the street?"

"No, there was ice in the street."

"Was it melting?"

"No, it was not melting." And so forth.

We develop all the questions we can think of that would show whether it was hot or whether it was cold. Now each of those little elements is a circumstance, that is circumstantial evidence. If when we are all through it all moulds together and shows that is must have been very cold outside, then you would be justified in drawing that conclusion. Whether you have direct testimony or whether you have circumstantial evidence you have always got the question of whether you are convinced beyond a reasonable doubt of something. In either case, whenever a witness takes the stand your first question is: Am I convinced beyond a (1553) reasonable doubt that

he is telling the truth? Because if you are not, why, then it does not make much difference what he says. Then where you have circumstantial evidence you have the additional step: Am I convinced beyond a reasonable doubt he is telling the truth? And, then, am I convinced beyond a reasonable doubt from the facts which he tells me that some other fact is true? Am I convinced beyond a reasonable doubt from the fact that everybody had an overcoat and hat on, had the overcoat collar up, the fact that there was ice in the street, am I convinced beyond a reasonable doubt that it is cold outside? Because that is the question in the case.

Suppose Mr. Rosenblum said, "I looked out there for five minutes and I couldn't see a soul." And we say, "Was there water in the street?"

"The streets were bone dry," or "I can't tell whether it was water or whether it was ice." We could get a situation where all of the circumstances he related did not prove a thing. They could mean one thing and they could mean the other. Then your circumstantial evidence does not prove the ultimate fact, the question of whether it is hot or (1554) cold.

So I think we could say that no greater degree of certainty is required with respect to circumstantial evidence than direct. In either case you have to be convinced beyond a reasonable doubt as to the import, the impact of the testimony.

If all of the circumstances related are consistent only with guilt or only with the guilty knowledge which is in question, or with the guilty intent, why, then, you would be justified in saying, "I am convinced beyond a reasonable doubt from those circumstances that so and so is guilty, or that so and so possessed this knowledge or intent." If, on the other hand, there is a hypothesis which is equally consistent with innocence, in other words, the circumstances go both ways, or all of the circumstances do

not point toward guilt, if there is an innocent explanation for those circumstances, then of course you are not convinced beyond a reasonable doubt that so and so is guilty or that so and so had this guilty knowledge or intent. So that is the rule in general as to circumstantial evidence.

Here we have got to get back in focus for a few minutes. I am not attempting to give all the (1555) testimony because I cannot relate all the circumstances without getting off into another summation. You had the tellers who saw certain things, the documents which show certain things. The Government argues that there is only one explanation for these things and that is that the defendant had a certain guilty knowledge, that he knew all about the Chernoff transaction and that he knew that the money was not being paid to the true Chernoff and that, therefore, all of these letters which he wrote to the Government were knowingly false. And the defendant has argued that those facts, in the first place, he says, some of them are not true, the testimony is wrong in certain respects, and as to those parts which are true he says they do not add up to that proof, there is an innocent explanation for all of those things. That is the general analysis of this kind of circumstantial evidence.

We are down now to about the last thing I am going to talk to you about and that is the credibility of witnesses. As I have already told you, you are the sole and exclusive judges on that. Who is to be believed, how much of his testimony is to be believed is all up to you. And all I am going to do (1556) now, and you do not have to follow my checklist at all, I am going to run over fairly briefly things which the courts over the years have thought may help you or have some significance in this regard. But as I said at the beginning, it is your judgment as to what is important, your own thinking about a person. Nobody can tell you exactly how to tell whether a person is telling

the truth or not. So I suggest things that you may want to take into account. In the first place, did the story as he told it make sense? Does there seem to be a rational basis for it, or is it an unrealistic story that requires that you had better sift this a little more? Was it realistic? What kind of a person was he? Was he smart or was he dumb? Is he likely to have a good recollection or a bad recollection? Was he in a position to observe or was he in a poor position to observe? Is it the sort of thing he would be likely to remember? Or is it the sort of thing that would only have a passing interest to him? What was his demeanor on the stand? Did he look frank and forthright as he testified to you? Or did he look like he was withholding from you, trying to hold back or holding back from you? Was he smart? Was he shifty? (1557) How would you deal with him if you ran across him in your business in everyday affairs? How would you appraise him if he told you something relating to yourself?

You may also take into account the fact that a person has or has not been convicted of a crime. A person who has been convicted of crime, that means that at some time he had a sufficient disregard of the law that he did something which was so flagrant that he was caught and punished for it. That is another thing you take into account. If he did it once is he the sort of fellow that will do it again? Has he learned his lesson, or is this sort of habit-forming and does it mark him as a person who will do that?

The same thing with respect to prior illegal acts which he was never convicted for. Sometimes we do things that we do not get caught at, some serious, some not so serious. If the witness tells you, "I committed certain acts, I committed forgery, larceny," things like that which have an element of dishonesty in them that not only broke the law but they were dishonest things—"I gave false testimony under oath"—any of these things that show that at least

at one time he has been willing to do something dis- (1558) honest. And you have to decide, has he learned his lesson? Has he quit? Is he telling the truth here? Or is it the sort of thing that permeates the man and therefore you won't believe him here?

Also, you may take into account prior inconsistent statements. If a man says one thing today and said something else a few years ago or last month or last week, why, that again is something you may take into account. None of these things are conclusive in themselves but they are all little things that you add up and look at when you analyze a witness. And if there were any inconsistent statements is there a satisfactory explanation for them? Very often, you or I, you are asked about something today and asked about five years ago and describe different things with complete innocence. It depends upon the statement and the circumstances. If some of the witnesses here have shown inconsistent statements you take into account whether it is the sort of inconsistency that marks a liar or whether it is the sort of inconsistency that is understandable, or whether it is the sort of inconsistency that marks a liar who may be nevertheless telling the truth today. Because what we are interested in here is the truth. That (1559) is all we want. It is not a question of who we like, who we do not like. What we want is the truth. But we want to be sure that we are acting on the basis of the truth.

Another thing you take into account is the interest a witness may have in the outcome of the trial. We know that if a person has an interest that sometimes subconsciously and sometimes deliberately he will lie or distort the facts to further his interest. So one of the things you always look for is, has the witness got an interest in the outcome of this trial or in the impact of his testimony which might get him to say something that was not true?

I do not mean to exclude all the other witnesses, but

there are two that got the principal attention here as far as this point is concerned. One was Mishel and the other was the defendant himself. Mishel said that he has been convicted in the State Court, that he is under a heavy sentence and that he hopes that he will get some consideration as a result of his now telling what he contends is the truth. Now you have two questions. First, would that induce him to tell something that is not the truth? And, second, did he do it?

(1560) And then you have the question of the defendant. Nobody has a greater interest in the outcome of this trial than the defendant himself. So he has an interest which might induce him to distort the truth. But if you say, "I won't believe anybody who has an interest in the trial," what you are in effect doing is, one, depriving the defendant of his right to testify, which the law says he shall have, it says he has a right to testify; and, then, you will decide whether his interest so dominated his testimony that you believe it or not. And similarly you would be depriving the Government of the ability to use witnesses which it must from time to time use because, after all, no party on either side can pick its witnesses. The witnesses depend upon who was present when certain things happened, and you have to take what you get.

So although it is perfectly within your province, you can do what you please, you may say, "I won't ever believe an interested witness," I suggest to you that the interest a witness has in the outcome of a case, if he has one, is simply an additional factor which cautions you to look at his testimony very carefully in the light of that (1561) interest but not necessarily to disregard it. But that is entirely a matter for you.

Where you have a witness who has an interest or where you have a man who is an accomplice, for instance I will say Mishel on the basis of his testimony is an accomplice here, you have to look at him as though he were part of

this same crime. In other words, he has his own problems with respect to this case and his own interest. And the defendant contends, further, he not only is an accomplice but he is motivated against the defendant because the defendant testified against him on one occasion.

So where you have a person subject to that kind of stress, that kind of temptation or profit which might lead him to exaggerate, to withhold or to deliberately lie, then you look to see to what extent is he corroborated by witnesses who have no such motive. And the Government has produced a whole series of witnesses here who they claim corroborates Mishel and is all inconsistent with the defendant. The defendant makes a different contention. He says that it does not work that way at all, that the picture is in his favor. But those are the things that (1562) you may wish to look for.

Now if you conclude that a witness on the stand deliberately lied to you as to a material fact, why, you can disregard his testimony altogether if you want or you can try to sift out that part where you think he lied and follow that part which he did not. All of this comes down to saying it is up to you, use your own judgment. But these are things which you may consider.

If a witness is equally available to both sides there is no inference to be drawn from either side failing to call him. If he is only available to one side and that side fails to call him, you may draw an inference that he would testify adversely. There was some talk about Rosenberg. My recollection of the testimony, and I may be wrong, there was no proof one way or the other and therefore I do not think there is any basis one way or the other for drawing any inference regarding his failure to testify here. It is a matter I will leave to you. I have told you what the law is on the subject.

Now we come to things which I am sure you know. A jury can act only by unanimous verdict, that you must

render a separate verdict as to each count (1563) of the indictment, and in that regard I will tell you that you are not to take into account punishment, sympathy, prejudice or any of those things. The trial of a lawsuit can be carried out exactly as the law intends it and that means that you simply do your job. You have no broad scale responsibility beyond one of the most important responsibilities of citizenship and that is to report on the facts of this particular case. Punishment is my problem, if that arises, and it is not a matter which in any way concerns you. What I do or do not do is no problem of yours. That is something that is altogether foreign from this part of the trial. And the same with sympathy and prejudice.

There are going to be twelve of you in the juryroom, and it is your duty to try to render a unanimous verdict if you can. It must be a verdict which each one of you feels sincerely, honestly, himself. But that does not mean that there should be any dogmatic approach to the problem. It does not mean that whatever view you have when you first go into the juryroom is the one you must follow all the way through. On the contrary, just as each one of you has paid most careful attention to every bit (1564) of testimony in this case and to every exhibit, so have your eleven fellow jurors. They have been just as conscientious as you have. You owe a duty to each other to state the views you have, your reasons for them, and to listen with courtesy and a willingness to be convinced, with an open mind, as to the views of your fellow jurors.

You have done a superb job through this trial and I am sure that the balance of your deliberations will be conducted on the same high plane.

I will ask if there are any exceptions.

I am going to ask you ladies and gentlemen to wait here just for a few minutes. Don't discuss the case at all. At this point I always find out how many points of

law there were that I should have covered that I did not and if there is anything I have to do to supplement my instructions I will give them to you.

We will go in the robing room.

(The following proceedings took place in the robing room.)

Mr. Perry: What would your Honor suggest as to our procedure? Should we go through our requests to charge?

(1565) The Court: Any of your requests to charge which I have not charged you can consider denied. I tried to cover them in substance as I thought they merited coverage. If there is any particular one you want to call my attention to that you think was just an oversight, go ahead. I went through all your requests last night.

Mr. Perry: I have made notes, your Honor, as you charged. I may have missed some things. The first request to charge, your Honor, we asked for some charging as to the effect of the indictment so that there would be no confusion.

The Court: I think I have covered it.

Mr. Perry: Also, your Honor did touch upon the presumption of innocence. We would ask your Honor to enlarge——

The Court: I think I have covered that. I have charged this so many times that I think I will keep to my own language on that rather than as you suggest.

Mr. Perry: We had requested that the jury be charged that the presumption of innocence is to remain with the defendant until such time as they actually and finally reach a verdict. That might be ten hours (1566) of deliberation.

The Court: I think they have it as it is.

Mr. Perry: Your Honor, we have requested specifically charges 18 and 19 concerning Sam Siegel and Norty

Schnabel. You mentioned of course Mr. Mishel and the defendant but you eliminated any reference to those. Siegel you may remember, your Honor did cover generally perhaps in saying that some people had prior convictions.

The Court: Did Schnabel have one too?

Mr. Hallinan: No.

Mr. Rosenblum: Schnabel has no prior record, as I remember from the testimony.

Mr. Hallinan: He has no prior record.

The Court: I think, as a matter of fact, my recollection of my charge is that I said I wasn't trying to list them all; I just picked two principal illustrations.

Mr. Perry: Your Honor had charged, referring to our request No. 21, your Honor charged of course about circumstantial evidence and if there is any hypothesis and they are to give the defendant benefit of the doubt, but I would ask you to go further and charge that they cannot and may not draw any conclusion (1567) of guilt unless they affirmatively find no reasonable basis for hypothesis.

The Court: I think I said that two or three times. In other words, that unless all the circumstances convinced them beyond a reasonable doubt of the guilty element, why, that fact has not been established. I don't think I will go over it. I will take my chances on it.

Mr. Perry: On 23, your Honor, we especially brought to your Honor's attention in substance, your Honor, that is where we say if the jury concludes that there might be suspicion or other facts in connection with the defendant's conduct, that that is not sufficient, suspicion is not enough to convict.

The Court: I think I have covered that. I told them even if the Government had the preponderance of the evidence, if they had a reasonable doubt they must acquit.

Mr. Perry: Your Honor, in charge 27 we requested

that it is the Government's duty to investigate, that they don't win or lose a case, and I just want to make it clear——

The Court: I told them what their duty was. That was to bring back the truth.

(1568) Mr. Perry: Requested charge 30, the defendant and the Government are equal before the law, that they are not to give any special consideration to the Government.

The Court: I mean to charge them that. I think that sort of cheapens my charge on the presumption of innocence to open it now. I frankly meant to put it in before I charged on circumstantial evidence and I forgot. I will leave it entirely up to you. I don't think it helps the defendant at this point. It is something I meant to say, but I don't think it makes much difference.

Mr. Perry: Your Honor, we will defer to your Honor's thought.

The Court: All right.

Mr. Perry: One of the things I would again urge upon you, in the indictment all three counts charge a false and fraudulent statement was made. And you in all your discussion of this, unless I am mistaken, you in all your discussion spoke of false. Frequently a statement may be false but it may also not be fraudulent.

The Court: I told them that it had to be false and it had to be knowingly false and done with (1569) deliberate intent to deceive. I think I took your charge as to wilfulness. My charge in substance rotated around that.

Mr. Perry: Yes. You were very close to what we had suggested. The only thing that troubles me about not having charged "fraudulent" is the we had in our summation argued to the jury that the defendant was asserting a claim in good faith. The intent to deceive is part of the entire——

Requests to Charge

The Court: I think I will let it stand. My feeling was that I had made that fairly clear. I would have to charge on all of that. I couldn't talk about fraudulent without going back, without explaining how that fitted into wilfulness and everything else.

Mr. Perry: I don't recall, your Honor, when you discussed wilfulness that you differentiated between carelessness——

The Court: I think I specified that at least twice. In other words, mere negligent act or mere careless act was not enough. I am quite sure I did on the discussion of the third count, and I think that I referred to it once again.

Mr. Perry: I am at the end of our charges, (1570) the last two or three, so I am going to jump up a bit. We had requested in 36 and 37 that if the jury found that the letters upon which the indictment was based were substantially different than the allegations in the indictment that they should acquit. Your Honor did not charge that. Your Honor charged something different.

The Court: I charged that unless the purport and intent of these letters was as charged, they must acquit. I didn't put it in the language of variance because the question of variance is one for me rather than for them. I thought I gave you the full benefit. As a matter of fact, I thought I probably went further than perhaps I should. I may have done an injustice to the Government there, because even if there were variances and the Government proved a variance I think they probably proved their case. But the way I charged it to the jury, unless the jury finds the documents mean what the indictment says they meant, they haven't proved their case. I thought I would rather err in favor of the defendant than the Government on that particular question.

Mr. Perry: That would be all that I would call to your attention about your failure to charge (1571) as we re-

quested, and to the extent that your Honor has failed to do as we have requested we respectfully except.

Mr. Rosenblum: Also, in a general way I believe your Honor modified some of our requests and we except to such modifications as you made.

The Court: That is right.

Mr. Rosenblum: We have an exception as to that and also as to those charges where you failed to charge in the language we asked.

The Court: For the modifications or failing to charge.

Mr. Perry: I have made some notations as to objections we would make to your Honor's charge. I know Mr. Rosenblum has made some.

Mr. Rosenblum: I made some notations as to facts that your Honor stated. You finish yours.

Mr. Perry: Your Honor, in your factual recital, one thing we were trying to make clear during the course of the trial was that none of the tellers could possibly have seen anything that occurred at Mr. Miller's desk prior to the time Kennedy came over. They couldn't posibly—of course they could have. But they themselves testified they did not see anything prior to that time. (1572) The first thing they know is when Kennedy came over.

Your Honor said something to the effect, when we were discussing the third count, referring to Chernoff and whether or not Mishel came over, your Honor said something to the effect that the tellers claimed to have seen who was at Miller's desk at the time.

The Court: No. I said they saw that at the time there was nobody there. I think I will take my chance on that.

Mr. Rosenblum: This is on the same point. I believe your Honor stated that as to the question of identification as to whether the person was identified as Chernoff to Miller, there were two sources of information the Government produced; one is the testimony of Mishel and

the other was the tellers. I think as your Honor stated it it would appear that you were saying to them, appearing to give them the fact that at the time of the identification the tellers did see what was happening and that therefore when they said they saw no one at the desk with Mr. Mishel that they were testifying there was no person introduced. I think the testimony as given by the defendant is the man was brought over to him and (1573) identified as Chernoff, then he talked with the defendant about some other matter and this man returned.

The Court: I don't recall that.

Mr. Hallinan: No. Miller's testimony was that he sent guard Kennedy over and that ends his testimony. I will get you the page of the record for that.

The Court: No. Don't bother, because I am not going to charge it.

Mr. Perry: I believe there is not sufficient testimony to support your Honor's statement as to the time of the identification which the defendant claimed that the tellers were then alerted or then in position or had reason for looking over—for instance, let us assume that there was identification and then thereafter the man who was identified left and the bonds were given to Kennedy and he brought them to the teller. Their testimony would be as to what happened after Kennedy came to them and not to what happened before.

The Court: I understand your point. I don't think there is any factual basis for it, and I am sure that my charge, read in its context, and with the precautions that I have given to the jury (1574) they will not be misled.

Mr. Perry: Exception. The other thing I think your Honor said was that the defendant said that he knew that the payee was employed at Roth's Grill.

The Court: Did I say he knew?

Mr. Hallinan: I think you said he was informed.

Mr. Perry: If your Honor said that, if I am correct, I think it is a serious mistake of fact, and particularly since you took just some of the facts to bring it to their attention.

The Court: I don't think I said he knew. But if I did, it was so obvious that all I was doing was giving a sketch of the contentions that I don't think it is worth changing.

Mr. Perry: We take an exception to your Honor's refusal to charge and to recharge as to the two things I brought to your Honor's attention.

The Court: Yes.

Mr. Perry: I have a few more I wrote——

Mr. Rosenblum: Your Honor is refusing the request to recharge.

The Court: Yes. Anything I don't do I refuse (1575) to charge.

Mr. Perry: Your Honor, during that charge I think you used the exact language, "avoidance of initials on bonds," because I wrote it down in my notes as you were speaking at that time.

The Court: Did I say bonds?

Mr. Hallinan: I think you said redemption forms.

Mr. Perry: Either one. "avoidance" is the thing I have in mind. And then you followed that by saying that the Government claimed the practice of the bank was to put initials on. And you went on in that fashion. But actually I am sure that is the Government's contention that it was the practice of the bank to put initials on. But the defendant produced three witnesses. Brennan was the manager who said there was no fixed practice. The defendant said there was no fixed practice. I think Wilmot also indicated that there was no fixed practice.

Mr. Hallinan: Wilmot said the exact contrary. "What did the officer do?" "He would place his initials"——

The Court: I don't think it is worth going over. I think I made the defendant's position clear (1576) on that. Maybe I didn't.

Mr. Perry: The only thing, Judge, is that the way it was stated it was kind of, you know, it was the Government's position. The impression I got, Judge, and I wish I had your language because I may be unfair when I say it, but the impression was, I was left with the impression that it was kind of clear that that was the practice, that initials were to be put on there, and the absence of initials—that is why the word "avoidance" stuck out in my mind.

The Court: Oh, I remember how it got into it. In other words, the defendant's whole position was this wasn't false so he didn't have to get into the question of knowing the falsity. I think I just gave an illustration. I don't think I will go over it again. I didn't attempt to give any full-scale discussion of the evidence.

Mr. Perry: Your Honor, I sympathize with you in what you were trying to do in giving different illustrations of opinion and a statement. I can agree with you, it isn't the easiest thing in the world. But, frankly, I was a little confused by the illustrations you gave.

(1557) The Court: I think I have done the best I can. We will charge the confusion to the subject matter.

Mr. Perry: May I ask your Honor to do this? Would your Honor charge the jury that the form which was used to make the statement may, if they so conclude, be conclusive as to what the statement purported to be?

The Court: I think that is instinct in what I said. In other words, I don't want to make it look as though the burden is on the defendant to sustain the form. The way I think I put it was, the question is whether they could read it the other way.

Mr. Perry: My only thought, Judge, for clarity would be, if the statement were "I believe" that the jury pretty

much has to say, well, this is a statement of an opinion unless revised.

The Court: I will tell you, Mr. Perry, rather than unravel the whole subject matter I think I will let it stand as it is, because there is no way that you can talk about any one element of it without getting into the main question. My thought was that I had made a fairly clear picture of it and left it to the jury to decide which category this one is.

Mr. Perry: Then, in the first count you are (1578) speaking of the Government's theory that Miller had to know that the bonds were not properly cashed in accordance with the Government procedure, and therefore it is entirely immaterial what anybody said to him, and I would respectfully suggest——

The Court: I thought you had to find both. As a matter of fact, I tried to bend over backwards in your favor. I said that to prove that wrong they had to prove both that it was in fact wrong and that there was no reasonable basis in the information which he had or that he had no information. I think that is what I said.

Mr. Perry: Perhaps I misunderstood.

The Court: As a matter of fact, I think I got that from your request, too.

Mr. Perry: Well, factually there is, understandably so, perhaps, a little confusion with some of the bonds. You had confused the Missouri Pacific bonds with the Alpren stock when you were speaking of the loan made at the bank.

The Court: Well, is it worth getting into? All I tried to do was to get that whole business down to a level where I think it belongs. I don't think I will go back into that again.

(1579) Mr. Hallinan: I took it in the sense in which it came out of the case. There was a loan, later the Alpren stock was put up as security——

Mr. Rosenblum: The Judge said Missouri Pacific.

Mr. Hallinan: Oh, I didn't hear the words.

The Court: The Missouri Pacific was part of the—that was the $5000 loan.

Mr. Rosenblum: No. On the $1300 loan it was Missouri Pacific. You said the loan and he then brought in Missouri Pacific bonds.

The Court: I don't think that whole issue merits any further discussion, so I will let it stand.

Mr. Perry: Then on the question of credibility of the witnesses and the question of coming out with prior convictions and so forth, your Honor said something to this effect, that anything that the witness had ever done that was wrong you could ask him about it. Something to that effect.

The Court: I said in a general way. Then I indicated also that I had limited both counsel in that regard.

Mr. Perry: Yes. That is exactly what I had in mind, sir. Actually you said you had limited (1580) it to both counsel when you said that anything ever done wrong you could ask the witness about it. But we were precluded from showing that there was a good deal more was wrong about Mishel that we could have shown.

The Court: I think that is fairly apparent. I will let it stand.

Mr. Rosenblum: I think you said every item of a person's life so that you can determine what the witness's credibility is.

The Court: I think I said that in a general way, and I said that most of our conferences at the bench had been with respect to how far you could go, both counsel were going to go——

Mr. Rosenblum: I think that the damage might be in the sense that the jurors get an idea that you did permit us to go into all these facets, you see, that we had a right

to go into, and I think the most we went into was a very insignificant portion of what we wanted to go into.

The Court: I will let it stand. My recollection of the charge is that it was——

Mr. Perry: Your Honor said something to the effect that the probative value of prior misdeeds, (1581) except as they may shed some light on matters in the indictment—that may not be quite accurate.

The Court: That may well be what I said. In other words, it was only insofar as they served to illuminate the issues before us. Then I think I went on to explain that they related to credibility and to knowledge. I also went on to say I thought you were trying to develop a tendency to drag Miller into every mess that Mishel himself was in, in other words, to bear out your contention of revenge. I think that is covered adequately. I will let it stand.

Mr. Perry: Your Honor, this ties in somewhat with the other, something about anything that a witness had ever done that was wrong you could ask him about. Later on when you got to the point you charged as we requested, that the defendant was only on trial for this particular crime and nothing else. That is all right. But then you went on to say in effect that we would be here until Christmas if counsel could prove what they tried to do and tried to prove other events not charged in the indictment. The impression was left that they were discussions of Miller's prior misdeeds and we would then be here until Christmas.

(1582) The Court: I will clarify that. Don't let me forget that. I will make it clear I was talking about Mishel.

Mr. Perry: Yes. And for the same reason, the illustration when you talked of the liquor and the policeman. That was the defendant, you see. And that illustration of the liquor and the policeman——

The Court: There I was trying to make sure that they didn't let any bias hurt Miller.

Mr. Perry: That we certainly think was good. But it followed after this business at the bench, "until Christmas."

The Court: All right.

Mr. Hallinan: I just have two. I ask your Honor to charge No. 4. A false statement made without knowledge as to the truth or falsity of the facts is a false statement knowingly made——

The Court: No.

Mr. Hallinan: One other thing I would like to ask your Honor to charge. You have stated, is this the kind of statement that is likely to mislead. I would ask your Honor to charge that it doesn't have to succeed, that the department doesn't have to act (1583) upon it.

The Court: Fine.

Mr. Perry: Your Honor has charged that.

The Court: No. I never touched it one way or the other.

Mr. Perry: He said it doesn't have to succeed, is what your Honor said.

Mr. Rosenblum: I think if you reemphasize——

The Court: I said it has to be something which could conceivably sway the Federal officer one way or the other.

Mr. Hallinan: Two or three times your Honor said that. And I made a note. I think that is very important. I don't think they should have the opinion that it has to succeed.

Mr. Perry: I would respectfully except.

The Court: I will let it stand.

(The following proceedings in open court in the presence of the jury.)

The Court: There is only one thing I want to make clear that—you know we got off in that discussion of other acts, possible illegal acts not charged in the indictment—and I said that I had limited counsel in their efforts to fully explore (1584) them, in their colloquy here at the bench, I did not mean to suggest in the least that they were acts relating to the defendant. They were acts re-

lating to Mishel. That I did not want to get into a trial of every event that he had gotten into in his past, in view of his admission that he had been, as he said, a bad boy for at least five years, and we had enough to do to try the issues we had here. But the colloquy was with respect to his crimes and nobody else.

All right. We are going to excuse the two alternates with the thanks of the Court. I am very grateful to you for your punctuality and the interest you have given the case. You are excused now.

(Two alternate jurors excused.)

(Two marshals sworn.)

The Court: The jury may retire.

(Jury retires at 11.40 a. m.)

The Court: I think we had better stay in the court house. I will probably let the jury go to lunch some time after one, after the principal noon rush has thinned out a little bit.

(11.55 a. m.)

The Court: I just had a note from the jury. (1585) "Please furnish us with the indictment and the letters in connection with same."

I assume they want the letters that I have up here. These are the exhibits.

Mr. Hallinan: 22, 23 and 24.

The Court: And the circular letter, what is that?

Mr. Hallinan: That is 21.

The Court: Off the record.

(Discussion off the record.)

The Court: We are going to have to staple the backs so that they can't see any of the entries on the back. I will just give these to you to send in.

On further exhibits, do you want me to get you in to talk with you about it or do you want the clerk to send in anything they want?

Requests from Jury

Mr. Rosenblum: I think it might be better if you let us know.

The Court: All right.

(Requested exhibits sent in to the jury.)

The Court: I guess if there is any further request we will hear from them.

(12.25 p. m.)

(1586) The Court: I have another note. The jury says, "Please furnish us with Treasury Department letter of November 16, 1956 to James W. Miller." The year—I think they want the letter that is referred to in the letter of December. You know, it says, "Certain particulars in your letter were wrong."

Mr. Rooney: Defendant's Exhibit AV I think is the one they are referring to.

Mr. Hallinan: I think we may have a problem. I am not sure you offered that.

The Clerk: I think AV is in.

Mr. Hallinan: AV is in evidence, yes. November 16.

The Court: I am sure that they have gotten the date from the letter they already have in there because as I remember at the end of paragraph 2 it says, "Further, item 2 in your letter was wrong," something like that. That is what they want. Could I see that, Mr. Hallinan, to make sure I know what is going in.

(Mr. Hallinan hands to the Court.)

The Court: All right. You give it to the marshal. All right, we will recess again.

(1587) (Exhibit sent in to the jury.)

(1.15 p. m.)

The Court: I think we will send the jury to lunch. Recess until 2.30.

(Recess to 2.30 p. m.)

Requests from Jury

(2.25 p. m.)

The Court: I have another note from the jurors. "Please furnish us with Treasury Department letter dated March 11, 1952, from James W. Miller." That must be the letter to which the April letter was a response.

Mr. Rooney: Defendant's Exhibit AK.

Mr. Hallinan: Somebody has a photographic memory or else they took notes.

The Court: No. I think the letters refer back.

Mr. Hallinan: Oh.

The Court: All right. We will recess again.

(Recess.)

(2.45 p. m.)

The Court: The jury would like some testimony read at this time. "Please furnish us with a transcript of Miss Graef's testimony at this trial."

I think it would be better if we read the (1588) testimony to them here. As I remember it, she was interrupted by Mr. Heffelfinger.

Mr. Hallinan: That is right.

The Court: She testified one afternoon and then she came in the latter part of the following morning and went over to the following afternoon.

(Jury in box.)

The Court: Mr. Foreman, the communication I have is, "Please furnish us with transcript of Miss Graef's testimony at this trial."

Now although it may seem clumsy to you, we can't do that, but we will read it to you. So, the stenographer is now going to read the testimony of Miss Graef to you and you just sit back in the meantime while we get it.

If there is any way in which you could specify any portion, why, we would be perfectly glad to have you do that, but if you would rather have the entire testimony read, why, that is the way we will do it.

The Foreman: I——

The Court: I don't want individual comment now. Is

this something you want to talk to the other jurors about as to whether you want to specify any portion of it or should we go ahead and read the entire testimony?

(1589) A Juror: Do we have to go back in the back and talk?

The Court: I think it will probably be better, if there is going to be any extended discussion on this. You go back in the juryroom for a few minutes. There seem to be some of you want to say something. I am sorry for these mechanical troubles but there is no way around it. You go back, and take your time, don't worry.

(Jury retired.)

Mr. Rosenblum: Your Honor, in the light of the request of the jury I think that it all should be read.

The Court: Do you want it all read?

Mr. Rosenblum: I am afraid that it is going to be difficult to take part and say this ought to apply and something else ought to apply. In the light of the note which came from the jury I would prefer that it all be read.

The Court: The fact is, I can't tell them what they want. They would like a transcript that they could refer to, and I don't think we should do that. I just want to know what they really want, in view of the mechanical problem we have, and I have made it (1590) clear to them that they can have the entire testimony if they want it. We will see when they come back. If they have any problem at all, why, we won't be hasty here.

I think we will take a few minutes' recess. I will wait in the robing room for a while.

(Recess.)

The Court: Bring them in.

(Jury returned at 3.03 p. m.)

The Court: Mr. Foreman, another note for me.

The Foreman: May I give it to you that way?

The Court: Yes, sir.

Now I would like to ask you to wait right there. Don't

talk or say anything. I will call counsel into the robing room with the stenographer. And bring the minutes.

(The following proceedings took place in the robing room.)

The Court: They want all her testimony as to her cashing of the Chernoff bonds. We have all the testimony on direct and cross on that subject.

We start with "What was your job at the Pennsylvania Exchange Bank?" on page 450. I would leave out the stuff on the diagram. Do you think that (1591) is very meaningful?

Mr. Hallinan: No. Does your Honor say that starts on 450? There is preliminary matter, too.

The Court: I think you have to get her job, don't you?

Mr. Hallinan: All right.

The Court: That is what it would seem to me. As I remember it, you didn't waste much time on that.

I think what I would do is read the question. "Now, if you can, would you turn around and look at that chart," and then simply say that we won't repeat that part about where she identified her desk and so forth.

Then we come down to page 453, "Are you familiar with a person by the name of Irving Mishel?" Then we go on and skip the colloquy.

Now I would leave out that about the blank pads, redemption forms.

Mr. Rosenblum: What page?

The Court: I am up to 461. "Did Mishel ever introduce anyone to you as Nat Chernoff?" "No, he did not." "As a matter of fact, did you ever speak to Irving Mishel at the bank?"

"No, I did not." (1592) Then I would quit at that, after "No, I did not," and about whether the redemption forms were kept and about the pad.

He comes down to page 463, "Miss Graef, I show you Exhibit 13," that is the bond register.

Mr. Perry: Is that in connection with the cashing of the bonds? You are leaving it out.

Mr. Hallinan: This is what she testified to, the complete procedure she followed.

The Court: "The bond register sheet on which I showed the cashing of the Chernoff bond"—do you want the bond register and all that?

Mr. Hallinan: I don't think it is necessary.

Mr. Perry: I wouldn't say it is necessary.

The Court: On 466. But this is all regarding the bond register.

Now we begin the cross. I don't see the first part at all about the conversation she had with Sershen.

Before we leave the first part, Mr. Hallinan, the first part that I have said we have started with was page 450, "What was your job at the Pennsylvania Exchange Bank?" And then we went over to the diagram, page 452. I stopped before that first question on (1593) page 452. I don't see any point in going into the diagram at all.

Mr. Perry: No.

The Court: Then we go over to 453. "Are you familiar with a person by the name of Mishel?" And then that goes on. That is the long gap. Have you got that, the ending on that?

Mr. Perry: You are eliminating some on 454, Judge, the colloquy.

The Court: The colloquy goes out.

Mr. Perry: Yes. Just leave out the colloquy. That goes to the top of 462.

Mr. Hallinan: 461 I think. You left out beginning with "Was anyone introduced to you"——

The Court: No, we take that. Down to "No, I did not," at the top of 462.

I guess that is all, isn't it?

Mr. Perry: All the rest of that is out.

The Court: The first part has in it the instructions.

Leave that out. We will start with, "Do you know Irving Mishel," and then we will go on. On page 547, "On the occasion when you cashed the Chernoff bonds—let me ask you this:". Now I would stop at 548 where you say, "Did you have occasions (1594) when other officers sent"—you get off into the general practice then. I would stop after the word "approval" on the first line of 548.

Mr. Hallinan: We get back into it on 548 also.

The Court: "Were these bonds approved"?

Mr. Hallinan: Yes.

The Court: Shall we leave out that question and answer there or do you want it in?

Mr. Perry: No, we can leave it out. How about picking up, "Do you recall speaking with Mr. Perry?"

The Court: We will leave that out.

Mr. Perry: Put it in. It goes into the same——

Mr. Hallinan: "Were these bonds approved when they were sent over that way? No, they were not."

Mr. Perry: You have it further back where you left in the part about, "Did you feel any impropriety in cashing the bonds?"

The Court: Do you want that out or in?

Mr. Perry: Well, you left it in before.

The Court: Do you want it in?

(1595) Mr. Hallinan: I would, yes.

Mr. Perry: If you want that in, then I think that part should be left in.

The Court: I wonder whether we want to get into the impropriety. I thought all they want is the relation of the facts which occurred at the cashing.

Mr. Perry: You take out the other and we take this out, otherwise you have half a story.

The Court: We will leave out the whole business I think because we want to keep this as concise as we can.

I would leave out the whole business, 547 and 548, al-

though he does ask a few particulars about this incident, he is really asking to compare this incident with the general practice. I think we will leave that out.

Mr. Hallinan: 549 he gets back into this.

Mr. Perry: What about cashing? No. "You felt the bonds should have been initialed?" Now we are talking about something after the——

Mr. Hallinan: No. "You say that M. Kennedy said that Mr. Miller approved it, and, therefore, you cashed it?"

(1596) Mr. Perry: Then we have to have the next question, "Did you make it a practice to ask that every bond be initialed that you cashed?

"No, I did not."

Leave them both in or leave them both out.

The Court: I think I will probably leave that out. I will tell the jury, if you want, that I have limited this to the recital of what happened on this particular occasion, not general practice or anything else.

552 I think we get back to.

Mr. Perry: Yes.

The Court: Down at the bottom, the last question.

Mr. Perry: "Now on the occasions"—is that what you have in mind, Judge? I didn't know where you were running to.

The Court: "I think you said on one of the occasions when you cashed the bonds," I would start there, "which you testified about."

Mr. Perry: Which is that? On 552?

The Court: Yes. The second line from the bottom. "I think you said on one of the occasions when you cashed the bonds, which you testified about (1597) on your direct, you looked over and you saw Mr. Mishel sitting near or at the desk of Mr. Miller." And then you developed that point that you wanted me to emphasize this morning, "Would you know when he came in to the bank on that day?

"No."

I guess we will skip that colloquy. Then we will go ahead with the next question about how long was he there.

"I can't say."

552, the second line from the bottom we begin down to the second answer on 553, and then we start with the question after the "Court" and go down through the rest of that page.

Mr. Perry: There is colloquy on 554. You want that out.

The Court: The question stays in, though, because I overruled the objection. Leave that colloquy out. This cross all goes in because this is all on the subject.

Mr. Perry: The colloquy on 556.

The Court: Yes, that goes out.

Mr. Perry: There is some more following that between Mr. Hallinan and the Court. I think (1598) the rest of that is all colloquy. Starting with "Mr. Hallinan: I object to that" on 556 down to the bottom of that page is all colloquy.

The Court: That question that is never answered, we will leave that out.

Mr. Perry: Yes, leave that out.

The Court: I guess that is the end. Do you want to go into this stuff about the conversation with Mr. Perry? I have left out all of the conversation with Sershen, and I don't think that had anything to do with this anyhow. That stuff with Mr. Perry got us nowhere. So why don't we leave that out? Do you want this about where the opening was?

Mr. Rosenblum: No.

The Court: Have you got this so that you can pick up the pages?

Mr. Hallinan: Fairly well, yes. A couple of them I missed.

The Court: This is all general (turning pages).

Mr. Perry: Yes, Judge, so far.

The Court: I am up to 573.

Mr. Hallinan: This is all about the bond register.

(1599) The Court: She never spoke to Miller about the bonds. Do you want that? That is page 577. Then you get into the bond register there. 578.

Mr. Perry: Are we going to take in——

The Court: I left out all about the bond register.

Mr. Perry: No, not the bond register. 577. Are you going to——

The Court: I was going to leave all that out. I don't think they are interested in that. They are interested in what she said happened. That is it I guess.

Off the record.

(Discussion off the record.)

(The following proceedings took place in open court in the presence of the jury.)

The Court: Mr. Foreman, what we have done is cut down the testimony to the actual parts dealing with the incident in the bank and we have left out everything as to practice and so forth, and if when you go back in the juryroom you want more of it, you let us know. But we have done our best to give you what we thought you asked us for.

The Foreman: Thank you.

(1600) (Portions of testimony of Virginia Graef read as previously indicated.)

The Court: All right. The jury may retire now.

(Jury retired at 3.40 p. m.)

The Court: The court will recess.

(Recess.)

(Jury returned to the courtroom at 4.00 p. m.)

The Clerk: Ladies and gentlemen, please answer as your name is called.

(Clerk calls names of jurors. All jurors present.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

Verdict

Motion to Increase Bail

The Foreman: Yes, we have.

The Clerk: What is your verdict, sir?

The Foreman: Your Honor, we find the defendant, James W. Miller, guilty of the three counts in the indictment.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find the defendant, James W. Miller, guilty on all three counts of the indictment?

The Foreman: That is right.

(1601) The Clerk: And so say you all.

Mr. Rosenblum: May the jury be polled, your Honor?

The Court: All right. Poll the jury.

(Jury polled.)

The Court: The jury is excused with the thanks of the Court.

I will tell you, for whatever it may be worth, I think there was ample basis in the record for your verdict. So you are excused, and thank you again for your fine service.

(Jurors retired from the courtroom.)

Mr. Rosenblum: May we delay the motions to the day of sentence, your Honor?

The Court: All right, very well.

Mr. Rosenblum: May the defendant be continued in bail? He is a married man, he has a daughter, and he lives with his family.

The Court: Mr. Hallinan?

Mr. Hallinan: On instructions of my office I am not going to move to remand the defendant but I would move to increase bail to $25,000.

The Court: What is the bail now?

Mr. Hallinan: 10,000.

(1602) Mr. Rosenblum: 10,000. Frankly, it just means an additional expense to the man.

The Court: Mr. Hallinan, do you have any——

Denial of Motion to Increase Bail

Motion to Set Aside Verdict

Mr. Hallinan: Just the fact that it is after conviction.

Mr. Rosenblum: I would like to save him that expense.

Mr. Hallinan: May we approach the bench, off the record?

The Court: Yes, come up.

(Conference at the bench between Court and counsel off the record.)

The Court: Well, I will continue bail in the present amount. What date would you like for sentence?

Mr. Hallinan: Any date would be satisfactory.

Mr. Rosenblum: I think we ought to have a probation report.

The Court: I think so too.

Mr. Hallinan: I agree.

Mr. Rosenblum: Three weeks from now. I know in Room 318 they ask for about three weeks.

The Court: Well, we will make it November 27 at 10.30. I think I will be in Room 1506 at that time. All right. You will reserve motions until then.

(1603)

New York, November 30, 1956;
10.30 o'clock a. m.

Present:

Mr. Hallinan,
Mr. Rosenblum,
Mr. Rooney.

The Clerk: United States of America v. James W. Miller. Ready, gentlemen?

Mr. Hallinan: The Government is ready.

The Court: All right.

Mr. Rosenblum: May it please the Court, I first move to set the verdict aside upon the grounds that it was con-

trary to the evidence and the weight of the evidence and upon the ground that the charge was improper as a matter of law, and upon the further ground that Court's rulings on the questions of law and the admissibility of evidence were improperly made, and upon all the grounds provided by the Rules of Criminal Procedure.

May I make it all at one time?

The Court: Yes.

(1604) Mr. Rosenblum: In addition, your Honor, we have made a specific application, the original of which I believe has been forwarded to your Honor.

The Court: I have it here. Do you want it filed?

Mr. Rosenblum: Yes. If you have it filed I think I can save some time in what I say to your Honor.

This application is predicted upon all the prior proceedings which we have had in this case, included in the minutes of the trial and all the exhibits which were admitted in evidence, and we ask for an order as provided by Rules 29 and 33 of the Rules of Criminal Procedure, we ask to set the jury's verdict aside, and that is the verdict which they rendered on November 22, 1956, and we ask for a direction of judgment of acquittal or in the alternative for a new trial. The grounds are set forth in the application which your Honor has just filed. I asked for that so that I think I can save some time, because I believe that many of these points have already been argued before your Honor. And unless your Honor wanted some additional argument on some items, I intended to possibly touch on some where I think that (1605) maybe a few words might be said by me. I wanted to point out, of course, on the various questions, I think that was pretty thoroughly briefed and a copy was submitted both to the Government and to your Honor.

Of course we in substance, and I may be saying it a little differently than was said previously, we say that the crime which is charged would depend on whether or not the defendant did represent or state in the letter of De-

cember 26, 1951—I am referring to count 1; of course the same would likewise apply as to count 2—that the bonds were cashed in accordance with the procedures provided by the circular letter which was referred to during the trial. The indictment of course doesn't say that we stated that we were informed and that that statement is false. It has never been set up that way. They have stated, as your Honor knows, and I won't repeat it, that we made a false representation, that we cashed the bonds and that the bonds were cashed as provided by the requirements of the circular letter.

We urge again and we believe that if there was a false statement the one that should have been charged in the indictment was the fact that we made (1606) a false statement when we said we were informed. And then you know what would follow, and I am not going to take the time to go into those details.

The Court: I think we have been over that.

Mr. Rosenblum: And it has been said a little differently, and we have covered it, and that is why I do not intend to take much time on that.

I do think that in connection with the points that we raise now as to the defectiveness of the indictment, I think that has not been discussed in that particular way, we wanted to point out that at the time that your Honor charged in this regard, that is, in regard to whether or not what we said in counts 1 and 2 was a statement of fact, it was a statement of opinion, your Honor took the position that we were contending that it was a statement of opinion. We say no, we are contending that what he said is a statement of fact. In this regard may I point out, let us say as to count 2, when we advised the Department, as we did by the letter which was sent, we were not trying to say this is our opinion; we were saying this is the fact. And when your Honor submitted the matter to the jury on the basis that, and you were practically saying it as a (1607) matter of law, what the Government was saying

was a matter of fact and that we were trying to meet it by saying it is a matter of opinion, we say that the fact that we were informed as to count 1 or when we expressed the opinion that it is our belief that we lived up to the spirit and the requirements of the circular letter, we were not expressing an opinion. We say that is a fact. Now, if that fact was false then that would be another matter. But we don't say, as your Honor charged the jury at the time, that we were contending that this is a matter of opinion and not a matter of fact; we urged as to both those counts that it is a matter of fact and not a matter of opinion.

The Court: My only comment on that is that the charge was undoubtedly favorable to the defendant. Go ahead.

Mr. Rosenblum: I am trying to skip some of this because I know we have covered it. I only want to touch on those that I think we should bring to your Honor's attention.

Your Honor knows that we have urged that we believe that your Honor unduly curtailed our cross-examination of Mishel, the grounds of which (1608) we stated. And we bring to your Honor's attention the leading case, we think, Alford v. United States, 282 United States 687, which your Honor most likely is fully familiar with.

The Court: Yes. I gave that a lot of thought at the time, and if it is wrong it is wrong. But I don't think it is.

Mr. Rosenblum: Also in that same regard may I bring to your Honor's attention the case of U. S. v. Gruber, 123 Fed. (2d) 307, a Second Circuit case, and Collenger v. U. S., 50 Fed. (2d) 347, which is a Seventh Circuit case in which they held that "We think there is substantial authority that cross-examination of specific acts of misconduct are not excludable as collateral if the purpose is to impeach the credibility of a witness."

Motion to Set Aside Verdict

The Court: I am not going to go through and restudy my whole decision on that question. I don't think it is inconsistent with those holdings, or such a holding, let me say.

Mr. Rosenblum: I think your Honor knows that we have brought to your Honor's attention the fact that we believe there is a failure of proof as to the question as to whether or not the Government has (1609) established that the matter was within the jurisdiction of a department or agency of the United States and that, therefore, we feel that this should require, if that is so, that there be a dismissal of the indictment. I know your Honor has stated in your charge to the jury that you were taking judicial notice, or at least Mr. Hallinan at one point took the position that he was urging to you that you could take judicial notice of the particular item. In effect, I think your Honor did that in your charge to the jury. And based upon the Moore case, 185 Fed. (2d), the Starr case, 131 Fed. (2d), 190, they express our contention that the proof of that particular item cannot be dispensed with as an element of the crime which we think must be proved by evidence which should have been adduced here. And we believe that your Honor was in error when you stated that you thought you could take in effect judicial notice of that particular fact.

The Court: I am content with the record as it now stands.

Incidentally, as we go through here, by my failing to take issue with you in any of your statements I do not suggest that I am acquiescing in them. (1610) I am just simply not going to take time to rediscuss them.

Mr. Rosenblum: The other matter I am not going to go into, the venue, jurisdiction, matter. I think your Honor is fully familiar with that.

We have one last thing that I think occurred during the charge that I would like to direct your attention to

and that deals with two counts. In connection with the third count your Honor said this at pages 1529 and 1530. "The next question is are you convinced beyond a reasonable doubt that the statement in the letter was false, the statement that Mishel introduced the person to the defendant as Chernoff."

Then you said, "Now that gets us into one of the heart questions, whether in fact Mishel introduced the person to the defendant at the time these bonds were cashed as Chernoff or whether he did not. The defendant claims that he did. And he has testified that he did. The prosecution claims that he did not, and in that course they have submitted Mishel as a witness and they have produced the tellers who claim to have seen who was at Mr. Miller's desk at that time. (1611) Yon have heard the testimony in that regard."

This was referring to the occasion when Mr. Miller claimed that a man was introduced to him by the name of Chernoff and Mishel said of course that there was never such an introduction. I think that I specifically brought it to your Honor's attention when we had the recess after your charge and that we since that time have taken the evidence of the three tellers—because we know what Mishel said; he said there was no introduction and we know that the defendant said that there was an introduction. And we think as your Honor said it here and the way you charged it to the jury you were in effect saying that you may consider, it is for you to say since these people testified in effect, or at least the Government claimed that they were giving testimony in effect as to what occurred at the time of the introduction. For an analysis of the testimony of the three tellers, if you take Graef, if you recall it also came a little more into focus when you remember that part was reread to the jury at the end and she said she first knew about it after

Kennedy had brought the bonds to her. She didn't know whether anybody was or was not brought to Mr. (1612) Miller before that time. As far as Horan was concerned, he says exactly the same thing. As far as Lucey was concerned, he says exactly the same thing. So that the only testimony which they give on that point with reference to what occurred at the time of the the claimed introduction, I think where you Honor said it was up to the jury, it looked as though you said in effect it was for them to say, examining the testimony, because the Government claims that that is corroboration. And considering the length of the record, the involved case that it was, I believe that it might be the basis for the jury's verdict on the third count. Of course as your Honor treated it, starting with the third count and going back to the second and the first, I think it might have an effect upon the second and first counts.

I bring that to your Honor's attention as a very substantial basis for our motion for the relief which we set forth in the application. And, of course, without going into any of the other items which I am not touching on, we are relying upon everyone of the items which are identified as A to M, inclusive, in the motion papers.

(1613) The Court: All right. I have already expressed my view on the point about the charge which you have just made, and I feel all the more strongly on it, inasmuch as Miss Graef's testimony was carefully reread on the entire subject as the last thing which the jury heard. So I think in view of these cautions, I doubt that there is any inaccuracy in the charge, but if there was I think I made it clear to the jury that I was not presuming to tell them what the facts were. So I will deny your motions in all respects.

Mr. Rosenblum: I respectfully except.